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No. 2301

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Plaintiff in Error,

vs.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Defendant in Error.

VOLUME I.
(Pages 1 to 240, Inclusive.)

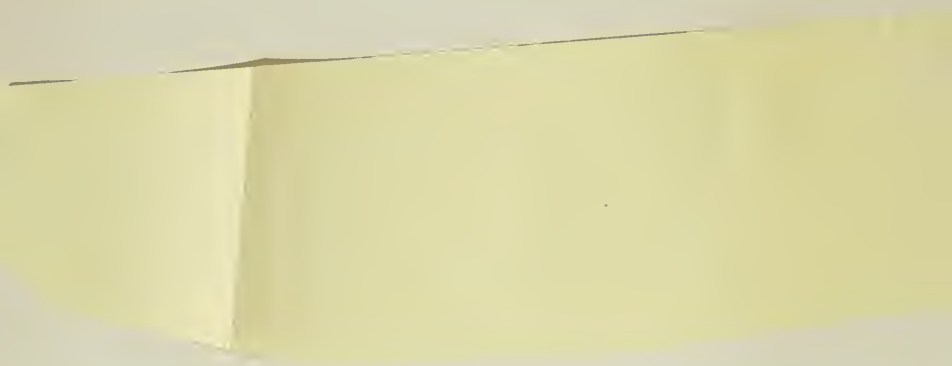
Upon Writ of Error to the United States District Court
of the Territory of Alaska,
Third Division.

FILED

SEP 2 - 1913

Records of U. S. Circuit
Court of Appeals

833



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VOLUME I.
(Pages 1 to 240, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska,
Third Division.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Names and Addresses of Attorneys of Record.

J. H. COBB, Juneau, Alaska, Attorney for Mrs. E. A.
Reed, Plaintiff and Appellee.

R. J. BORYER, Cordova, Alaska, Attorney for
Copper River and Northwestern Railway Com-
pany, a Corporation, Defendants and Appellant.

JNO. R. WINN, Juneau, Alaska, Attorney for
Copper River & Northwestern Railway Com-
pany, a Corporation, Defendants and Appel-
lants. [1*]

In the District Court for Alaska, Third Division.

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO., a Corporation,

Defendant.

*Page-number appearing at foot of page of original certified Record.

Complaint.

The above-named plaintiff, complaining of the above-named defendant, for cause of action alleges:

I.

Plaintiff is the duly appointed, qualified and acting administratrix of the estate of J. E. Reed, decd., and sues herein as such for the use and benefit of herself as the surviving widow, and her two children hereinafter named, as the orphan minor children of the said J. E. Reed, decd.

II.

The defendant is a corporation duly incorporated and doing business as a common carrier by steam railway in the Territory of Alaska, and was engaged in such business at all the times hereinafter mentioned, operating its line of railway from the town of Cordova, Alaska, up the Copper River and into the interior of Alaska.

III.

That on or about the first day of January, 1912, and for some time prior thereto, the said J. E. Reed was in the employ of the defendant as a locomotive engineer, engaged in driving its engines attached to its cars over its road as he might be directed by the defendant, its officers, agents, and vice-principals. That on the date aforesaid, defendant had [2] negligent allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes and cinders, negligently allowed by defendant to be dumped upon the roadbed, and otherwise suffered to become utterly unsafe and unfit as a roadbed over which cars and locomotives were to be operated, so

as to render the same extremely hazardous to the said J. E. Reed, and other employees of the defendant operating its said engines. That on or about the said date, while plaintiff's intestate, in pursuance of the duties of his employment, was driving an engine over defendant's said road, by reason of the unsafe and hazardous condition of said track, said engine was derailed and plaintiff's intestate was killed. That said fatality was due solely to the negligence of the defendant in failing to keep and maintain its roadbed in a reasonably safe condition for the operation of its trains thereon, and without any fault or negligence whatever on the part of the said deceased.

IV.

That deceased at the time of his death was a man in good health, 31 years of age, and earning, and capable of continuing to earn, \$3,000.00 per annum. That he left surviving him this plaintiff, his widow, and two minor children, Verne, aged 7 years, and Kenneth, aged 2 years, who have thereby been deprived of the support and care of a loving husband and father, and said children have been deprived of the education, training and nurture which only a father can give, and said plaintiff has been damaged in the sum of Twenty-five Thousand Dollars.

Wherefore, plaintiff prays judgment for the said sum of \$25,000.00 and costs of suit.

J. H. COBB,

Attorney for Plaintiff. [3]

United States of America,
District of Alaska,—ss.

E. A. Reed, being first duly sworn, on oath deposes

and says: I am the plaintiff above named. I have heard read the above and foregoing complaint, know the contents thereof, and the same is true as I verily believe.

E. A. REED.

Subscribed and sworn to before me this 24th day of August, 1912.

[Seal]

J. H. COBB,

Notary Public in and for Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 30, 1912. Ed M. Lakin, Clerk. By V. A. Paine, Deputy. [4]

In the District Court for Alaska, Third Division.

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Summons.

The President of the United States, to the Copper River & Northwestern Railway Company, a Corporation, Defendant, Greeting:

In the name of the United States of America, you are hereby commanded to be and appear in the District Court for Alaska, Third Division, to be holden at Valdez, in said District and Division, within thirty

days from the date of the service hereof upon you, then and there to answer the complaint of Mrs. E. A. Reed, as administratrix of the estate of J. E. Reed, decd., filed against you in said court, and if you fail to so appear and answer, for want thereof, the plaintiff will take judgment against you for the sum of Twenty-five Thousand Dollars, the amount prayed for in said complaint, a copy of which is herewith served upon you.

And you, the marshal of said District and Division, or your deputy, are hereby commanded to make due service and return of this writ. **HEREOF FAIL NOT.**

WITNESS the Honorable PETER D. OVERFIELD, Judge of said Court, and the seal thereof affixed at Valdez, Alaska, this 30th day of August, 1912.

[Seal]

ED M. LAKIN,
Clerk.

By V. A. Paine,
Deputy.

Marshal's No. 408. [5]

United States of America,
Territory of Alaska,
Third Division.

I hereby certify that I received the within Summons on the 6th day of October, A. D. 1912, at Chitina, Alaska, and thereafter on the 7th day of October, at Mile 114, I served the same on the therein named defendant, George Geiger, service agent for the Copper River & Northwestern Railway Company, a corporation, by delivering to him a copy of the

Summons, together with a certified copy of the complaint filed therein.

Returned this 8th day of October, A. D. 1912.

H. P. SULLIVAN,

U. S. Marshal.

By J. L. Brown,

Office Deputy.

MARSHAL'S COSTS:

1 Service.....	\$6.00
32 Miles @ 20.....	6.40

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 12, 1912, Ed. M. Lakin, Clerk. [6]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Motion to Quash and Set Aside Summons and
Service of Summons and Return of Summons.**

Comes now the defendant, the Copper River & Northwestern Railway Company, and moves the Court that the Summons and the service and return of the Summons in this case be quashed and set aside,

for the reason that the Summons in this action was not returned to the Court or Clerk thereof with whom the Complaint and Summons was filed and issued within forth (40) days after its delivery to the officer or other person for service. This motion is based upon the hereto attached affidavit and files in this case.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 7, 1912. Ed M. Lakin, Clerk. By Thos. S. Scott, Deputy. [7]

*In the District Court of the Territory of Alaska,
Third Division.*

#C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Affidavit [of R. J. Boryer].

United States of America,
District of Alaska,—ss.

R. J. Boryer, being first duly sworn, upon his oath deposes and says: That the Summons and complaint in the above-entitled action was delivered by the clerk of this court to the marshal's office in Valdez on the

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

E. A. REED, as Administratrix of the Estate of J. E.
REED, Deceased,

Plaintiff,

vs.

THE COPPER RIVER & NORTHWESTERN
RAILWAY CO., a Corporation,

Defendant.

Affidavit of S. T. Brightwell.

United States of America,
Territory of Alaska,
Third Division,—ss.

S. T. Brightwell, being first duly sworn, on oath deposes and says: I am the United States Deputy Marshal at Cordova, Alaska. Early in the month of September, 1912, I received from the marshal's office at Valdez, Alaska, the summons in this case for service upon Mr. Geiger, the agent of the defendant company. At that time, Mr. Geiger was out on the road and the railroad was not running trains because of wash-outs, and for that reason there was a delay in the service until about the 7th day of October, when the same was served by Deputy Brown, of Chitina. That Deputy Brown returned said summons to the Clerk's office by mail at Valdez.

That between the 7th day of October, when the service was had and the 12th day of October when the same was returned to the Clerk's office, there was no

mail-boat until about the 11th day of October, by which said summons could be returned to the Clerk's office. And there was no means of returning the summons after service prior to the 12th except by chartering a special boat at great expense, and the said [10] SUMMONS WAS RETURNED AFTER SERVICE AT THE earliest possible moment, by the usual and ordinary means of communication between Cordova and Valdez.

S. T. BRIGHTWELL.

Subscribed and sworn to before me this 23d day of Nov., 1912.

J. H. COBB,
Notary Public.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 23, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [11]

*In the District Court for the Territory of Alaska,
Third Division.*

Special November, 1912, Term, Nov. 23—9th Court
Day.

C.—50.

E. A. REED, as Administratrix of the Estate of J.
E. REED, Deceased,

Plaintiff,

vs.

THE COPPER RIVER & NORTHWESTERN
RAILWAY CO., a Corporation,

Defendant.

Order Denying Motion [to Quash].

This matter coming on this day to be heard upon the defendant's motion to quash, J. H. Cobb, Esq., appearing for the plaintiff, R. J. Boryer, Esq., appearing for the defendant, and after argument and affidavits of the defendant and the plaintiff being filed, and the same being by the Court considered, the said motion is denied, to which order and ruling of the Court defendant excepts and exception is allowed, and the plaintiff's motion for a change of place of trial is this day withdrawn.

Entered Court Journal No. C.—1, page 356. [12]

*In the District Court for the Territory of Alaska,
Third Division, at Cordova.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RY. CO.,
a Corporation,

Defendant.

Motion for Change of Place of Trial.

Now comes the plaintiff, by her attorney, and moves the Court to grant an order changing the place of trial of this cause from Cordova to Valdez, Alaska, and for cause shows: That the plaintiff cannot obtain a fair and impartial trial before a jury selected from a panel drawn from the town of Cordova and vicinity, as will more fully appear from the affidavits

hereto attached and made a part of this motion.

J. H. COBB,

Attorney for Plaintiff.

Service of a copy of above motion with attached affidavits admitted this the 21st day of November, 1912.

R. J. BORYER,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [13]

[Affidavit of J. H. Cobb.]

United States of America,
Territory of Alaska,—ss.

J. H. Cobb, being first duly sworn, on oath deposes and says: I am attorney for the plaintiff in the above-entitled and numbered cause. I have had business in the court at Cordova during the past four years, and during that time have spent a great deal of time in said town. Said town was built by, and is dependent entirely upon, the defendant railway company and its allied corporations; that is to say, the town was started and built as the tide-water terminal of the railway, and there is not as yet any business in said town except what comes either directly or indirectly from the railway company, and everyone in it is more or less dependent upon the said company or its allied companies. That probably one-half of those persons otherwise qualified for jury service would be disqualified by reason of being in the employ of the defendant, or one of its allied companies

under the same management and control. That of the remaining persons subject to jury duty, the great majority have such close business relations with the defendant or some of its allied companies that they would be disqualified by bias from serving, or if they should qualify on their *voir dire*, would in fact be under some sort of duress because of the peculiar conditions that exist. During the past two or three years I have had occasion to inquire into and ascertain as far as practicable the conditions existing at this place in regard to securing fair and impartial jurors in cases in which the railway company was interested. I have talked with many of the residents and business men of the town and asked their opinion, and am satisfied from all the information I have obtained that the plaintiff in this case cannot expect a fair and impartial jury to be had if this case is tried in Cordova. I further state that nearly all the persons who have informed me that conditions are such that a fair and impartial jury cannot be obtained here have declined to make an affidavit to that effect, because, they say, they fear to incur the ill-will of the railway company by so [14] doing. The allied companies referred to above are the Katalla Company and the Alaska Steamship Co., both of which are under the same control as the defendant railway company; and upon these three companies hangs nearly the entire business and welfare of the town of Cordova. By reason of these facts, the defendant has the power, as I verily believe, to coerce at least some of the members of any jury that could possibly be drawn under the law, at this place.

J. H. COBB.

Subscribed and sworn to before me this 22d day of
Nov., 1912.

[Seal]

K. L. MONAHAN,

Deputy Clerk of the District Court for the Territory
of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [15]

[Affidavit of C. P. Mickelson.]

United States of America,
Territory of Alaska,—ss.

C. P. Mickaelson, being first duly sworn, on oath deposes and says: I am a resident of the town of Cordova, Alaska, and have resided here for some five years last past. I have been a member of the City Council of the town of Cordova and have served as jury commissioner. I know the conditions prevailing in and around said town in regard to the probable influences which the Copper River & Northwestern Railway Company or its allied companies would have upon a jury, in a case in which it was interested in said town. The fact that the entire community in and around Cordova is almost entirely dependent for its livelihood and business upon the railway company and its allied corporations has produced a widespread feeling among the people of the community that any act on the part of an individual displeasing to the railway company will result in financial embarrassment and loss or business embarrassments to such person. This feeling is so widespread and general that I am fully satisfied that any jury drawn

from Cordova and its vicinity in a case in which the railway company was interested could be to a more or less extent influenced in favor of the railway company by this feeling. The feeling is such that I believe it will be very difficult to secure a jury at this place in a case in which the railway company is interested, some member of which would not feel more or less coerced in favor of the railway company.

C. P. MICKELSON.

Subscribed and sworn to before me this 21st day of November, 1912.

[Seal]

J. H. COBB,
Notary Public.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [16]

[Affidavit of W. J. Shepard.]

United States of America,
Territory of Alaska,—ss.

W. J. Shepard, being first duly sworn, on oath deposes and says: I reside in Cordova, Alaska, and have resided here and in this vicinity since long before the town was started. I know the situation and conditions existing here with regard to the probable influence which the Copper River & Northwestern Ry. Co. would have over a jury selected from this vicinity in any case in which it was interested. The great majority of the people of this community feel dependent upon the railway company to a greater or less extent, and feel that anything done by them that

might be displeasing to the company would result in financial loss to themselves. This feeling is so strong and general, that I do not believe it hardly possible to get a jury at this place, that, in a case against the railway, would not be influenced by it.

W. J. SHEPARD.

Subscribed and sworn to before me this 21st day of November, 1912.

[Seal]

J. H. COBB,

Notary Public in and for Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [17]

*In the District Court of the Territory of Alaska,
Third Division, at Cordova.*

#C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Affidavit of R. J. Boryer.

United States of America,
District of Alaska,—ss.

R. J. Boryer, being first duly sworn, upon his oath deposes and says: That he is attorney for the defendants in the above-entitled action; that the de-

defendants have their place of business at Cordova, Alaska, and all of its officers and officials in the active conduct of the defendants' business resides and are located at Cordova, Alaska; that in the trial of this case it will be necessary to call as witnesses the superintendent and auditor and other men who are in charge of and connected with the defendants' business, that it will work a great hardship upon these defendants if the superintendent and auditor and other officials of the company are required to go from Cordova for the trial of this case, as it is necessary for said officials to be at Cordova at all times in connection with the operation of said road, and it will work a great hardship upon said officials and officers if required to go to some other town for the purpose of testifying in this case; that it will be necessary to call as witnesses in this case the superintendent, the auditor and several of the civil engineers of said road; that by taking these men from Cordova as witnesses it would [18] necessitate the securing of men who are unfamiliar with the work of the road for the operation of same, and possibly be unable to get anyone to take their places during their absence, and by so doing would greatly retard the operation of the road and inconvenience many of the men who are employed on said road who are constantly quitting, drawing their time and in securing their pay.

That this plaintiff is now and was at the time this action was started a resident of Cordova, Alaska, the same as the said defendants herein.

That J. H. Cobb has only tried one personal injury case against the defendants herein in the town of Cordova, Alaska, and in said case he recovered a

large judgment of One Thousand (\$1000.00) Dollars for the plaintiff, which in the opinion of this affiant was excessive.

That this affiant believes and so states that judging from the past cases tried by the plaintiff's attorney and the general feeling and conditions at Cordova, the plaintiff can secure a fair and impartial jury and trial.

R. J. BORYER.

Subscribed and sworn to before me this the 22d day of November, A. D. 1912.

[Seal]

ED M. LAKIN,
Clerk. [19]

*In the District Court of the Territory of Alaska,
Third Division, at Cordova.*

C.—#50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendants.

Affidavit of George Geiger.

George Geiger, being first duly sworn, upon his oath deposes and says: That he is superintendent of the defendant companies in this action; that the operation of the defendants companies' business are managed and controlled by him from the town of

Cordova, Alaska, where the defendants' headquarters are located; that it is necessary for him to be at Cordova at all times in order to operate and superintend the defendants' interests except such times as it is necessary for him to go over and look after the road, and it is necessary that he be in close touch with the operation of said road at all times; that it would work a great hardship on him and the operation of the road and defendants' interests if he were required to leave Cordova for the purpose of attending the trial of this case.

That this affiant has been advised by R. J. Boryer, attorney for the defendants, that it will be necessary to have the auditor of the company, who resides at Cordova, present at the trial of this case; that it is necessary that the auditor of the company located here in Cordova be at his office at all times in order to look after and care for the [20] men who are daily quitting and leaving the road, many of whom take the first boat for Seattle; that if the auditor is required to leave Cordova to go to some other place to attend the trial of this case, it will be necessary to have someone come from Seattle, who is unfamiliar with the business and conduct of the business of the office located at Cordova, and would work a great hardship upon these defendants.

That in the trial of this case it will be necessary to have as witnesses civil engineers and engineers operating the locomotives and rotaries of the line of defendants' road; that by taking away these engineers and auditor it would greatly retard the business and

operation of the trains and work along the line of its road.

That this affiant believes and so states that the plaintiff can secure a fair and impartial trial and can secure and select fair and impartial jurors at Cordova, Alaska.

GEORGE GEIGER.

Subscribed and sworn to before me this the 22d day of November, A. D. 1912.

[Seal]

R. J. BORYER,

Notary Public in and for the District of Alaska, Residing at Cordova, Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [21]

*In the District Court of the Territory of Alaska,
Third Division, at Cordova.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Affidavit [of C. M. Frazer et al.].

United States of America,
District of Alaska,—ss.

We, the undersigned attorneys, residing and prac-

ting law in the town of Cordova, Alaska, each being first duly sworn, on oath deposes and says: That we firmly believe and so state that the plaintiff in the above-entitled action can secure a fair and impartial jury, and that the interests of the defendants companies at Cordova are not in such close business relations with the residents and citizens of Cordova and vicinity that they would be disqualified by bias from serving on a jury, and if they should qualify on their *voir dire* would be under no duress because of the conditions that exist at Cordova and vicinity.

C. M. FRAZER.

J. Y. OSTRANDER.

WM. O'CONNOR.

C. B. GILLESPIE.

Subscribed and sworn to before me this the 22d day of November, A. D. 1912.

[Seal]

R. J. BORYER, [22]

Notary Public in and for the District of Alaska, Residing at Cordova.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1912. Ed M. Lakin, Clerk. By K. L. Monahan, Deputy. [23]

*In the District Court for the Territory of Alaska,
Third Division.*

#C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Motion to Make Complaint More Definite and
Certain and to Strike.**

Comes now the defendant by its attorney and moves the Court to require the plaintiff to make the complaint more definite and certain, in that it state when and where and in what State and county the plaintiff, Mrs. E. A. Reed, was appointed administratrix of the estate of J. E. Reed, deceased, as alleged in paragraph 1 of the Complaint.

2.

And that plaintiff either be required to strike out the following words in paragraph 3 of the Complaint: "And otherwise suffered to become utterly unsafe and unfit as a roadbed," or require the plaintiff to state in what way and manner said roadbed was *otherwise* suffered to become utterly unsafe and unfit as a roadbed.

That plaintiff be required to strike out the following words: "And other employees of the defendant operating its said engines," which words are in the

first and second lines of paragraph 3 on page 2 of the Complaint.

R. J. BORYER,
Attorney for the Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 27, 1913. Angus McBride, Clerk. By V. A. Paine, Deputy. [24]

*In the District Court for the Territory of Alaska,
Third Division.*

Special April, 1913, Term—April 10th—1st Court Day.

C.—50.

Mrs. E. A. REED, as Administratrix,
Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO.,

Defendant.

**Order Denying Motions to Make More Definite and
Certain and to Strike.**

Now, on this day, this matter coming on to be heard upon defendant's motion to make more definite and certain and motion to make more definite and certain and to strike, R. J. Boryer appearing for defendant and motion and J. H. Cobb appearing for plaintiff,

WHEREUPON, after arguments were had and the Court being fully advised in the premises, denies said motion; and

IT IS FURTHER ORDERED that defendant have 5 days to file his answer, or until Saturday, April 12th, to otherwise plead herein. To the above order and ruling of the Court defendant excepts and exception is allowed.

Entered Court Journal No. C. 2, page No. 8. [25]

*In the District Court of the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Demurrer.

Comes now the defendant and demurs to the complaint in this action for the following reasons:

I.

That the Court has no jurisdiction of the subject of the action.

II.

That there is a defect of parties plaintiff.

III.

That several causes of action have been improperly united.

IV.

That the complaint does not state facts sufficient

to constitute a cause of action.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 12, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [26]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, Administratrix,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO., a Corporation,

Defendant.

**Order Overruling Demurrer and Permitting to
Amend by Interlineation.**

Now on this day this matter came on to be heard upon defendant's demurrer to the Complaint on file herein; J. H. Cobb appearing on behalf of the plaintiff; R. J. Boryer appearing for defendant, and after arguments had and the Court being fully advised—

IT IS ORDERED that said demurrer be and the same is hereby overruled, and

IT IS FURTHER ORDERED that plaintiff be permitted to amend Complaint by interlineation in this, to wit: By changing "\$1800.00" to "\$3000.00," and substituting "Plaintiff" for "Estate" in paragraph 5 of said Complaint, and

IT IS FURTHER ORDERED that defendant have five days to file his answer herein.

To the above order and ruling of the Court defendant excepts and exception is allowed.

Special April, 1913, Term—April 12th—3d Court Day.

Entered Court Journal No. C.—2, page No. 21.
[27]

*In the District Court of the Territory of Alaska,
Third Division.*

#C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN
RAILWAY COMPANY, a Corporation,
Defendant.

Answer.

Defendant answering plaintiff's Complaint says:

I.

Answering paragraph I of Complaint, says it does not have information sufficient to form a belief as to allegations contained therein; therefore denies same.

II.

Answering paragraph II of Complaint, admits allegations contained therein.

III.

Answering paragraph III of Complaint, defend-

ant denies each and all of the allegations contained therein.

IV.

Answering paragraph IV of Complaint, defendant says it does not have information sufficient to form a belief as to the allegations contained therein, therefore denies same.

AFFIRMATIVE DEFENSE.

Defendant for first separate and affirmative defense says:

I.

That if the said J. E. Reed referred to in paragraph III and IV of Complaint was killed, said death was caused by and [28] arose out of and from risks incidental to his employment and business in which said J. E. Reed was engaged and which risks the said J. E. Reed assumed.

Defendant for second separate and affirmative defense says:

I.

That if the said J. E. Reed referred to in the Complaint was killed, said death was caused by the negligence or contributory negligence of said J. E. Reed and of or by the negligence of a fellow-servant and persons working with him.

Wherefore, defendant requests that this action be dismissed and that it be allowed its costs and disbursements in this action.

R. J. BORYER.

United States of America,
District of Alaska,—ss.

I, Caleb Corser, being first duly sworn, deposes and

says: That I am the superintendent of the Copper River & Northwestern Railway Company, defendant named in the above-entitled action, and that the foregoing Answer is true as I verily believe.

CALEB CORSER.

Subscribed and sworn to before me this the 11th day of April, A. D. 1913.

[Seal]

R. J. BORYER,

Notary Public for the District of Alaska.

United States of America,

District of Alaska,—ss.

Due and legal service is hereby accepted this 17th day of April, A. D. 1913.

J. H. COBB,

Attorney for Plff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 17, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [29]

*In the District Court for Alaska, Third Division, at
Cordova.*

C.—50.

Mrs. E. A. REED, as Administratrix of Est. J. E.
REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RY. CO.,
a Corporation,

Defendant.

Reply.

Now comes the plaintiff, by her attorney, and denies all and singular the allegations in the affirmative answers of the defendant contained.

J. H. COBB,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Mrs. A. E. Reed, being first duly sworn, on oath deposes and says: I am the plaintiff above named. I have heard read the above and foregoing reply, and the same is true, as I verily believe.

E. A. REED.

Subscribed and sworn to before me this 17th day of April, 1913.

[Seal]

J. H. COBB,
Notary Public in and for Alaska.

Service of the above reply admitted, this April 17th, 1913.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 17, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy.
[30]

United States of America,
Territory of Alaska,
Third Division,—ss. .

I, the undersigned Clerk of the District Court, for the Territory of Alaska, Third Division, do hereby

certify that the hereto attached is a full, true and correct copy of the original Order Calling Special April 1913, Term, Cordova, Alaska, Appointing Jury Commissioner, and Fixing Time and Manner of Drawing Trial Jurors for said Term, as same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said court at Valdez, Alaska, this 28th day of April, 1913.

[Seal]

ANGUS McBRIDE,
Clerk.

By K. L. Monahan,
Deputy. [31]

*In the District Court for the Territory of Alaska,
Third Division.*

In the Matter of a Special Term of Court at Cordova,
Alaska, April 10th, 1913.

**Order [Directing Holding of Special Term of Court
in "Empress Theatre" Building at Cordova,
Alaska, etc.].**

WHEREAS, on consideration, it appearing that a Special April, 1913, term of court should be held at Cordova, Alaska, for the transaction of such business as may arise; now, therefore,

IT IS HEREBY ORDERED that a Special Term of court, Territory of Alaska, Third Division, be held in the "Empress Theatre" Building at Cordova, Alaska; said term of court shall begin on the 10th day of April, 1913, at the hour of ten o'clock A. M., and shall continue as long thereafter as the public busi-

ness may require; and

IT IS FURTHER ORDERED that the Clerk of this court shall give notice of the holding of said Special Term of court, as aforesaid, by posting notices thereof in at least three conspicuous and public places within the town of Cordova for at least thirty (30) days prior to the said 10th day of April, A. D. 1913; and

IT IS FURTHER ORDERED that the petit jury shall be summoned to meet in the "Empress Theatre" Building at Cordova, Alaska, on the said 10th day of April, A. D. 1913, at the hour of ten o'clock of said day; and

WHEREAS, it appearing to the Court that Arthur Lang is a fit and proper person to act as Jury Commissioner, being a citizen of the United States in good standing, a resident of the Territory of Alaska and a well-known member of the principal political faith opposing that of the Clerk of this court; now, therefore, [32]

IT IS ORDERED that Arthur Lang be and he is hereby appointed Jury Commissioner to aid and assist the Clerk of this court in selecting and depositing in the jury-box of this court the names of not less than three hundred (300) qualified men, as prescribed by law, from which the petit jury may be drawn for said Special Term; and

IT IS FURTHER ORDERED, that said Jury Commissioner and Clerk shall, on the 25th day of February, A. D. 1913, at the hour of two o'clock P. M. of said day, deposit in the jury-box of said court the names of not less than three hundred (300) men

as aforesaid; and

IT IS FURTHER ORDERED that the said jury commissioner and said clerk shall immediately thereafter proceed to draw from said jury-box, alternately, as provided by law, and the rules of this court, the name of twenty-four (24) men, having, or believed to have, the necessary qualifications to serve as petit jurors; the names of the first twenty-four (24) men so drawn to constitute said petit jury; and

IT IS FURTHER ORDERED that said drawing of said petit jurors shall take place publicly, in open court, in the courtroom of the courthouse at Valdez, Alaska, on the day and hour aforesaid.

Dated at Valdez, Alaska, this 24th day of February, A. D. 1913.

THOMAS R. LYONS,
District Judge.

[Endorsed]: Entered Court Journal No. 7, page No. 176.

Filed in the District Court, Territory of Alaska, Third Division. Feb. 24, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [33]

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the hereto attached is a full, true and correct copy of the original Minute Order found at page No. 11, Journal No. C.—2, calling Special Venire for April, 1913, term of court (First Special Venire) as same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said court at Valdez, Alaska, this 30th day of April, 1913.

[Seal]

ANGUS McBRIDE,
Clerk.

By K. L. Monahan,
Deputy. [34]

[Order Directing Issuance of Special Venire.]

*In the District Court for the Territory of Alaska,
Third Division.*

Special April, 1913, Term—April 10th—1st Court
Day.

In the Matter of a Special Venire for Trial Jurors
for Attendance at This Special April, 1913,
Term of Court.

WHEREAS, it appearing to the Court that the venire, heretofore issued for trial jurors has been returned and that there are but ten jurors available for service therein and being fully advised,

IT IS ORDERED that a Special Venire issue to the United States Marshal to summon from the body of the District and not from the bystanders twelve men qualified to serve as trial jurors at this Special term of court; said venire returnable at the hour of ten o'clock A. M., Monday, April 14th, 1913.

Entered Court Journal No. C.—2, page No. 11.
[35]

United States of America,
 Territory of Alaska,
 Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the hereto attached is a full, true and correct copy of the original Minute Order found in Journal C.—2, page No. 24, for Second Special Venire to be summoned from Valdez and Seward as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said Court at Valdez, Alaska, this 30th day of April, 1913.

[Seal]

ANGUS McBRIDE,
 Clerk.

By K. L. Monahan,
 Deputy. [36]

*In the District Court for the Territory of Alaska,
 Third Division.*

Special April Term—April 14th, 1913—4th Court
 Day.

In the Matter of a Second Special Venire for Trial
 Jurors at This Special, April, 1913, Term of
 Court to be Summoned from Valdez and
 Seward.

Order [Directing Issuance of Special Venire].

WHEREAS, it appearing to the Court that it is necessary in order to expedite business at this term of court that a second venire for trial jurors issue,

and good cause appearing therefor,

IT IS ORDERED that the Clerk issue a Special Venire directed to the United States Marshal to summon twenty men qualified as trial jurors to be in attendance at this Special term of court; said men, so drawn, shall be drawn by the said marshal from the town of Valdez and Seward, Alaska; said venire returnable forthwith.

Entered Court Journal No. C.—2, page No. 24.

[37]

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the hereto attached is a full, true and correct copy of the original order for discharge of first special venire issued at the Cordova, April, 1913, Term of Court, as the same appears on file and of record in my office.

In testimony whereof, I have subscribed my name and affixed the seal of said Court at Valdez, Alaska, this 28th day of April, 1913.

[Seal]

ANGUS McBRIDE,

Clerk.

By K. L. Monahan,

Deputy. [38]

**[Order Excusing Members of First Special Venire
for Term.]**

*In the District Court for the Territory of Alaska,
Third Division.*

Special April, 1913, Term—April 24th—13th Court
Day—Thursday.

In the Matter of the Excusing of Trial Jurors
Drawn on the First Special Venire Issued at
This Term of Court.

Good cause appearing therefor,

IT IS ORDERED that all members of the first
Special Venire, issued for trial jurors at this term
of court, be and they are hereby excused for the term.
The names of said jurors are:

- | | |
|--------------------|---------------------|
| 1. M. Finkelstein, | 6. F. H. Estabrook, |
| 2. E. A. Hegg, | 7. R. J. Kennefick, |
| 3. C. M. Berry, | 8. James Smith, |
| 4. E. P. Ziegler, | 9. Chas. Warren, |
| 5. L. G. Belter, | 10. R. R. Stewart. |

Entered Journal No. C.—2, page 52. [39]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

[Minutes of] Trial.

Now, on this day the trial of the above-entitled cause came on regularly for trial, J. H. Cobb appearing as attorney for plaintiff, R. J. Boryer appearing as attorney for defendant, and both parties announcing their readiness for trial, the following proceedings were had and done, to wit:

WHEREUPON, it being the hour of adjournment, and a jury not having been secured to try the issues in this cause, the further trial of said cause is continued until to-morrow at the hour of ten o'clock A. M.

Entered Court Journal No. C.—2, page No. 68.

Special April, 1913, Term. April 30th—18th
Court Day—Wednesday. [40]

*In the District Court of the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Exceptions to Jurors.

Comes now the defendant, by its attorney, R. J. Boryer, and respectfully shows that on the 24th day of February, A. D. 1913, this Honorable Court called a special term of court to be held at Cordova, Alaska, on the 10th day of April, A. D. 1913, and on said date April 10th, 1913, ordered that a special jury be summoned for said date pursuant to the laws pertaining to the drawing of jurors, and that in pursuance of said order a petit jury was drawn for said special term, pursuant to said order; said petit jury reported in pursuance to said order, which jury consisted of twelve (12) men; that all of the other names selected for said jury failed to report, a certified copy of order is hereto attached.

That on the 10th day of April, A. D. 1913, this Court issued an order for a special venire for the purpose of completing the regular panel of the petit jury. The men selected and summoned by said special venire being: L. G. Belter, F. H. Estabrook,

Geo. C. Hazelet, R. J. Kennefick, R. R. Stewart, C. M. Berry, M. Finkelstein, E. A. Hegg, A. J. Paxson, James Smith, Chas. Warren, E. P. Ziegler. That the aforesaid jurors selected by the first special venire were duly sworn and served as jurors, a certified copy of the first special venire is hereto attached.

That after the first special venire was issued, the [41] case of Snyder vs. Kelter was on the calendar and ready for trial, and the plaintiff's attorney objected to going to trial with the regular panel and the first special venire; that it was agreed between the plaintiff's attorney and the defendant's attorney, and the Court that a second special venire was to be issued, a certified copy of which order is hereto attached, and the second special venire was to be drawn from and limited to Seward, Alaska, and Valdez, Alaska, for the purpose of trying the case of Snyder vs. Kelter; that after the disposition of this case and on the 24th day of April, A. D. 1913, the first special venire was excused for the term and the names of the jurors on the second special venire from Seward and Valdez were held and used for the purpose of filling the panel of the regular jury.

That the first special venire was summoned and selected pursuant to the laws of Alaska and of the United States; that the second special venire was not selected according to the laws of Alaska and of the United States. Defendant attaches hereto certified copies of orders pertaining to the above jury.

WHEREFORE, defendant requests that the jury in this case be selected from the panel of the regular jury until the jury is completed or the ballots ex-

hausted, and that the names and persons selected in the second special venire be not used or placed in the box to be drawn from in the formation of the jury for this case, for the reason that the second special venire was not issued, in accordance with the laws of Alaska and the United States, and said jurors are selected from two particular places within the Division, namely, Seward and Valdez, and not in accordance with the law provided for selection of jurors.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Angus McBride, Clerk. By Thos. S. Scott. Apr. 30, 1913. [42]

*In the District Court for the Territory of Alaska,
Third Division.*

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned Clerk of the District Court, for the Territory of Alaska, Third Division, do hereby certify that the attached list of names is a full, true and correct list of the names of persons drawn on the first and second special venire for service as trial jurors at the Special, April, 1913, Term of Court at Cordova, in said Territory and Division, as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said

Court at Valdez, Alaska, this 24th day of April,
A. D. 1913.

[Seal]

ANGUS McBRIDE,
Clerk.

By K. L. Monahan,
Deputy. [43]

**First Special Venire Called During April, 1913, Term
of Court at Cordova, Alaska.**

L. G. Belter	Cordova
C. M. Berry	"
F. H. Estabrook	"
M. Finkelstein	"
Geo. C. Hazelet	"
E. A. Hegg	"
R. J. Kennefick	"
A. J. Paxson	"
R. R. Stewart	"
James Smith	"
Chas. Warren	"
E. P. Ziegler	"

[44]

**Second Special Venire Called During Special April,
1913, Term of Court at Cordova, Alaska.**

1. E. F. BellSeward, Alaska,
2. Jos. BourkeValdez, Alaska,
3. Geo. BrownValdez, Alaska,
4. Jas. A. ClintonSeward, Alaska,
5. E. E. Chamberlain...Seward, Alaska,
6. J. M. DaughertySeward, Alaska,

7. Antone EideSeward, Alaska,
8. C. H. GoldenValdez, Alaska,
9. D. P. GriswoldValdez, Alaska,
10. Smith HigginsValdez, Alaska,
11. P. S. HuntValdez, Alaska,
12. Z. L. King.....Seward, Alaska,
13. Jos. LeeValdez, Alaska,
14. G. R. MantheySeward, Alaska,
15. Sam McNieceValdez, Alaska,
16. L. H. PedersonSeward, Alaska,
17. Adam SwanValdez, Alaska,
18. Wm. SouleValdez, Alaska,
19. W. M. TroutValdez, Alaska,
20. Chas. WilcoxValdez, Alaska.

[45]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Order Granting Exception to Panel of Trial Jurors.

Defendant having filed its written objections to the formation of the panel of trial jurors prior to proceeding to the trial of the above-entitled cause,

and said objections having been considered by the Court and overruled, defendant by and thru its counsel excepts and exception is duly allowed by the Court.

Special April, 1913, Term—May 5th—22d Court day.

Entered Court Journal No. C.—2, page No. 84.
[46]

[Minutes of Trial (Continued).]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO.,

Defendant.

Now, on this day, the trial of the above-entitled cause came on regularly for trial; J. H. Cobb appearing as attorney for plaintiff; R. J. Boryer appearing for the defendant.

- | | |
|----------------------|----------------------|
| 1. P. S. Hunt, | 7. E. F. Bell, |
| 2. Smith Higgins, | 8. A. S. Jensen, |
| 3. James A. Clinton, | 9. Sam McNeice, |
| 4. Joseph Bourke, | 10. J. M. Daugherty, |
| 5. Joseph Lee, | 11. L. H. Pederson, |
| 6. Z. L. King, | 12. G. R. Manthey, |

were selected and sworn as trial jurors to try the issues in this cause.

WHEREUPON Plaintiff's Exhibits "A" and "B" were offered and admitted in evidence.

WHEREUPON O. L. Larson, Henry Lee, K. E. Holden, and Chas. Kitsman were sworn and testified as witnesses on behalf of the plaintiff.

WHEREUPON it being the hour of adjournment and the testimony of the witnesses being incomplete, IT IS ORDERED that the further trial of this cause be continued until to-morrow, at the hour of ten o'clock A. M.

ENTERED: Court Journal No. C.—2, page No. 69.

Thursday, May 1st, 19th Court Day—Special April, 1913, Term. [47]

[Minutes of Trial (Continued).]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Admx. of the Estate of J. E.
REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Now, on this day, the trial of the above-entitled cause came on again regularly for trial; J. H. Cobb

appearing as attorney for the plaintiff; R. J. Boryer appearing as attorney for the defendant; came the jury, heretofore impaneled and sworn herein, and being called and each answering to his name, the following proceedings were had and done, to wit:

WHEREUPON Chas. Kitzman resumes the stand and testifies further on behalf of the plaintiff.

WHEREUPON Defendant's Exhibit No. 1 was offered and admitted in evidence.

WHEREUPON Harry N. Wilson, Gus Theil and George Scott were sworn and testified as witnesses on behalf of the plaintiff.

WHEREUPON Harry N. Wilson and Chas. Kitzman were recalled and testified further on behalf of the plaintiff.

WHEREUPON W. J. Bibber was sworn and testified as a witness on behalf of the plaintiff.

WHEREUPON Plaintiff's Exhibits "C" and "D" were offered and admitted in evidence.

WHEREUPON Warren Taylor, Herman Albright and F. R. [48] Townsend were sworn and testified as witnesses on behalf of the plaintiff.

WHEREUPON Mrs. E. A. Reed was sworn and testified as a witness in her own behalf.

WHEREUPON plaintiff rests.

WHEREUPON, it being the hour of adjournment, the further trial of this cause is continued until to-morrow at the hour of nine o'clock A. M.

Entered Court Journal No. C.—2, page No. 71.

Special April, 1913, Term, May 2d, 20th Court Day—Friday. [49]

[Minutes of Trial (Continued).]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED as Admx. of the Estate of J. E.
REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Now, on this day, the trial of the above-entitled cause came on again regularly for trial; J. H. Cobb appearing for the plaintiff; R. J. Boryer appearing for defendant; came the jury, heretofore impaneled and sworn herein, and being called and each answering to his name, the following proceedings were had and done, to wit:

WHEREUPON, R. J. De Leo was sworn and testified as a witness on behalf of the defendant.

WHEREUPON, Defendant's Exhibits 2 and 3 were offered and admitted in evidence.

WHEREUPON J. W. Forrester was sworn and testified as a witness on behalf of the defendant.

WHEREUPON Harry N. Wilson was recalled and testified as a witness on behalf of the defendant.

WHEREUPON defendant rests.

WHEREUPON, the plaintiff offering no testimony in rebuttal, defendant files its written motion for a directed verdict, which said motion was by the

Court denied and exception taken and allowed.

WHEREUPON arguments were had by counsel for plaintiff and counsel for defendant, the jury was duly instructed as to the law in the case by the Court, and retired in charge of [50] their sworn bailiffs for deliberation.

THEREAFTER, said jury returning into court, in charge of their sworn bailiffs, and being called and each answering to his name, present, by and thru their foreman, in their presence, in open court, their verdict, which is in words and figures as follows, to wit:

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Admx. of the Estate of J. E.
REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury duly selected, impaneled, sworn and charged in the above-entitled action, do find for the plaintiff and against the defendant and assess plaintiff's damages at Twenty Thousand Dollars (\$20,000.00).

Dated at Cordova, Alaska, this May 3d, 1913,
day of May A. D. 1913.

E. F. BELL,
Foreman.

WHEREUPON, said verdict is ORDERED filed and entered by the Clerk and the jury is excused from further deliberation herein.

Entered Court Journal No. C.—2, page No. 74.

Special April, 1913, Term of Court—May 3d, 21st Court Day—Saturday. [50A]

*In the District Court for the Territory of Alaska,
Third Division.*

[Endorsed]: Filed in the District Court, District of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy.

No. C.—52.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Transcript of Testimony.

BE IT REMEMBERED, that the above-entitled cause came on duly and regularly to be heard at

Cordova, Alaska, beginning on the 30th day of April, 1913, at 2 P. M. of said day, before the Honorable PETER D. OVERFIELD, Judge of said Court, and a jury:

The plaintiff herein being represented by her attorney and counsel, John H. Cobb, Esq.:

The defendant herein being represented by its attorney and counsel, R. J. Boryer, Esq.:

The jury having been empaneled opening statements were made by Mr. Cobb on behalf of the plaintiff and by Mr. Boryer on behalf of the defendant:

WHEREUPON the following additional proceedings were had and done, to wit: [51]

[Proceedings Had April 30, 1913.]

[Examination of Jurors.]

Examination of Juror Adam Swan.

(Questions by Mr. BORYER.)

Q. What is your full name? A. Adam Swan.

Q. Where do you reside? A. Valdez, Alaska.

Q. When did you arrive in Cordova?

A. On the evening of the 5th, I think.

Q. Have you heard anything of the facts in this case? A. No, sir.

Q. Are you acquainted with the plaintiff in the case? A. I am not.

Q. Are you acquainted with the Alaska Steamship Co.?

A. I know some of them connected with that company.

Q. You know of the Alaska Steamship Co.?

A. I know there is such an institution.

Q. I will ask you if you have not had some difficulty by reason of or through your son, with the Alaska Steamship Co.?

Mr. COBB.—I shall object to that—the Alaska Steamship Co. is not connected with this case.

By the COURT.—Nor with the defendant, as far as we know.

Q. That is what I mean—with the defendant. I will withdraw the question providing that no insinuations are let into this evidence that the Alaska Steamship Co. and the subsidiary corporations are part of this defendant company.

By the COURT.—As far as I know, at least in the case already, there is no occasion for the mention of any subsidiary companies.

Mr. COBB.—I know of none.

Mr. BORYER.—I will withdraw the question then. [53*—2†]

Q. I will ask you if you have any feeling against the Copper River & Northwestern Railway Company. A. I have not.

Q. I will ask you if you have any feelings regarding corporations. A. No, sir, I have not.

Q. I will ask you if you will give the same consideration to this corporation as you would to an individual. A. I would.

Q. I will ask you if you have any feeling against this particular corporation. A. I have not.

Q. Do you know of any reason why you should not

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

sit as a juror in this case? A. I do not.

Q. I will ask you if you believe that people have a right to do business as a corporation and that they are entitled to the same rights and privileges under the law as individuals.

A. I do—I believe they have.

Q. I will ask you if you served as a juror within the last year in this court or in this division.

A. I served—not as a trial juror; no.

Q. What did you serve as?

A. I served on the special venire of the grand jury in Valdez last fall.

Q. You served on the grand jury in Valdez?

A. Last winter.

Q. The last winter—this past December?

A. Yes.

Q. In this court?

A. The court was then at Valdez. [54—3]

By the COURT.—The record will show.

Q. In this division? A. In this division.

Q. Have you served as a juror since then?

A. Not until I came here.

Q. Have you served as a juror prior to that, within the past year? A. I have not.

Mr. BORYER.—I submit a challenge.

Mr. COBB.—We resist the challenge.

By the COURT.—The challenge is overruled.

To which ruling of the Court defendant is allowed an exception.

Examination of Juror W. C. McCall.

(Questions by Mr. BORYER.)

Q. Are you acquainted with the plaintiff in this

case? A. No, sir.

Q. Have you heard anything of the facts of the case? A. No.

Q. Do you know of any reason why you should not sit as a juror in this case? A. I do not.

Q. Have you any bias or prejudice against corporations? A. No.

Q. Have you any against this particular corporation? A. No.

Mr. BORYER.—We pass the juror for cause.

(Questions by Mr. COBB.)

Q. Are you in the employ of the mine at Latouche? [55—4] A. Yes, sir.

Q. You know, do you not, that the Copper River & Northwestern Railway Co. and that mine are all owned by the same people or practically the same people? A. I have heard so.

Q. That is generally understood, is it not?

Mr. BORYER.—That is just the point I raised a moment ago—I object to the question for the reason that I was not permitted to introduce the identical same question.

Mr. COBB.—Counsel is mistaken. He did not ask if they were owned by the same people; if they are and there are reasons why that would influence him I think it would be a good ground for challenge.

Mr. BOYER.—There is nothing shown that he knows.

By the COURT.—These misunderstandings seem to come up whenever I have any sort of stipulation between the attorneys. You may answer the question.

To which ruling of the Court counsel for defendant is allowed an exception.

Q. Would that fact influence you in any way in arriving at a verdict in this case?

A. It would not.

Q. What capacity are you employed in?

A. In the carpenter business now, at the present time. (Juror passed for cause.)

The panel having become exhausted, with a jury out considering another case—

By the COURT.—Unless the attorneys agree to go on with the jurors we have, I think I will take a recess until the [56—5] other jurors come in.

Mr. BORYER.—I prefer that we have a full jury.

By the COURT.—The jurors who are now in the box will occupy the same position as though you may ultimately be chosen as far as conversation regarding this case is concerned with anybody, and if it should happen the other jury should come in by 4 o'clock, I would like to have you return into court and we will take it up this afternoon; if they do not, we will continue to-morrow morning, but we will adjourn tentatively until 4 o'clock this afternoon.

Mr. BORYER.—I want to take an exception. The defendant excepts to the Court's ruling in excusing the jury, for the reason that the law provides that when the panel is exhausted that the panel shall be filled from the bystanders and that this was not done, in that the jury was excused for the purpose of awaiting the return of another jury that was then considering another case and such jury would not be

from the bystanders as required by law.

Exception allowed.

[Proceedings Had May 1, 1913.]

MAY 1, 1913—MORNING SESSION.

(Jury completed and sworn and opening statements made.)

By Mr. COBB.—Plaintiff first offers in evidence a certified copy of the order appointing the plaintiff administratrix of the estate of J. E. Reed, deceased.

Mr. BORYER.—We desire to object, for the reason that the order is not accompanied by the petition and other papers upon which the order is based, and for the further reason that this is not the proper manner of showing the appointment of an administratrix. **[57—6]**

By the COURT.—In what respect?

Mr. BORYER.—That the records themselves should be shown here.

Objection overruled. Defendant allowed an exception.

The certified copy of order appointing the plaintiff administratrix of the estate of J. E. Reed, deceased, is marked Plaintiff's Exhibit "A," is attached hereto and made a part hereof.

Mr. COBB.—We next offer in evidence a certified copy from the same Probate Court of letters of administration.

Mr. BORYER.—To which we make the same objection.

Objection overruled. Defendant allowed an exception.

Letters of administration marked Plaintiff's Exhibit "B"—attached hereto and made a part hereof.

Mr. COBB.—We will call Mr. Larson. [58—7]

[Testimony—Plaintiff's Case.]

[Testimony of O. L. Larson, for Plaintiff.]

O. L. LARSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. O. L. Larson.

Q. Where do you reside? A. Cordova.

Q. How long have you resided here?

A. A little over five years.

Q. What is your business or occupation in life?

A. I am working for the railroad here, working for the Copper River & Northwestern.

Q. How long have you been in the employ of the Copper River & Northwestern Railway Co.?

A. From the 26th of March, 1908.

Q. Are you in their employ now? A. Yes, sir.

Q. In what capacity? A. Conductor.

Q. Were you in the employ of the defendant company in the month of December, 1911, and January, 1912? A. Yes, sir.

Q. Did you know during his lifetime one John E. Reed? A. Yes, sir.

Q. At the time last mentioned, namely, December, 1911, and January, 1912, did you know where he was employed?

A. He was employed here by the railroad.

Q. The Copper River & Northwestern Railway

(Testimony of O. L. Larson.)

Co.? A. Yes, sir.

Q. In what capacity?

A. He was an engineer. [59—8]

Q. Do you recall a train leaving here, that is, the town of Cordova, to go out over the line of the Copper River & Northwestern Railway on the 31st day of December, 1911? A. Yes, sir.

Mr. BORYER.—I ask the answer be withdrawn—it was answered before I could object. I desire to object to the question for the reason that it is immaterial and irrelevant and not pertinent to the issues in the case. This accident is alleged to have occurred at Mile 75A and it is immaterial as to the operation or running of that train from Cordova up to that point under the issues of the case.

By the COURT.—I have no objection to the question. The objection will be overruled.

Defendant allowed an exception.

A. Yes, sir.

Q. Have you any memorandum made at the time of the time the train left? A. Yes, sir.

Q. Referring to that and refreshing your memory tell the jury what time the train went out from here.

A. The train left here on the 30th of December at one o'clock P. M.

Q. Now, what made up that train?

A. The train I had was—I don't know just how many cars. I will look and see (referring to memorandum book). There was six cars in that train besides the engine.

Q. Begin at the front end of the train and tell the

(Testimony of O. L. Larson.)

jury as near as you can recall what the train was made up of.

A. Made up of the coach, the engine on the head end—

Q. What was the first engine?

A. Engine #102, I believe; next to the engine was a box-car and [60—9] then a gondola flat-car; following that was two box-cars and a coach on the rear.

Q. Carrying out passengers and freight?

A. Yes, sir.

Q. Where was the rotary at the time that that train left?

A. They left some time before I did but I don't know just what time they did leave.

Q. Some time before the train went out?

A. They generally leave before the rotary leaves.

Q. What train were you on? A. On the local.

Q. You were conductor on the local?

A. Yes, sir.

Q. Where did you overtake the rotary?

A. Going up?

Q. Yes.

A. I don't remember just where it was we overtook them.

Q. You did overtake them?

A. Yes, we overtook them.

Q. Was it before or after you passed Bridge 75A?

A. We overtook them before we got there.

Q. Before you got there—then the rotary and the engines pushing it and the local were all along

(Testimony of O. L. Larson.)

close together? A. Yes, sir.

Q. Now, I want you to tell the jury about the rotary and how that was made up—what that consisted of.

A. It consisted of a rotary, two pushers and a ca-boose.

Q. The rotary—what position did it occupy in the train? A. The rotary was on the head end.

Q. Was Mr. Reed anywhere on that train?

A. He was supposed to be on the rotary; yes. [61—10]

Q. He was engineer on the rotary at that time?

A. Rotary engineer.

Mr. BORYER.—We object to that as leading.

Mr. COBB.—From your statement to the jury I understood there *as* no dispute where Mr. Reed was working. I will withdraw that question—I don't want any possible error in this case.

Q. State if you know where Mr. Reed was working at that time.

A. I don't know what part of the engine he was on at that time. He was in the rotary, I suppose.

Q. Do you know what car he was on?

A. He was on the rotary, I suppose, where he belonged.

Q. What time was it, as near as you can tell, that this train composed of the two pusher engines and the rotary reached this bridge?

A. Going up, you mean?

Q. Yes.

A. Some time about midnight. I don't remember

(Testimony of O. L. Larson.)

just what time.

Q. Of what day?

A. That was on the 31st.

Q. The day following the time you left here?

A. Yes, the day following the time we left here.

Q. State whether or not the crews on those trains had been continuously on service, on duty, from the time they left here up to that hour.

Mr. BORYER.—I desire to interpose an objection, for the reason that it is incompetent, irrelevant and immaterial, and it is not pertinent to the issues in the case.

By the COURT.—For what reason?

Mr. BORYER.—For the reason that it has nothing to do with the issues in the case—it tends to prove nothing as to the [62—11] issues raised in the pleadings.

By the COURT.—You probably understand, without going into details, the statute referred to by Mr. Cobb in his statement.

Mr. BORYER.—I understand the statute but I desire to make the objection.

By the COURT.—If that is all you wish to say about the objection it will be overruled and exception allowed.

A. I think they had.

Q. At the time you reached this bridge or trestle did the train stop?

A. I don't remember whether they stopped before they got to the bridge or not,—I think they went over the bridge first before they stopped.

(Testimony of O. L. Larson.)

Q. Now, after they went over the bridge, what happened—what did they do next?

A. If I remember right, they were out of water and had to come back for water.

Q. How far beyond the bridge did they go?

A. I don't remember.

Q. Can't you give the jury some idea?

A. I couldn't say how far they did go.

Q. They did, however, back back to the bridge to get water?

A. Yes, they backed back there either for water or coal—I remember they coaled up back there, this side of the bridge.

Q. About how long as near as you can recall were they on this trestle?

A. I don't remember how long they were there.

Q. Do you know how many engines watered and coaled there? A. I do not.

Q. When they left there where did they go to?

A. They went to 78. [63—12]

Q. What did they do there?

A. Took water and coal there and, I believe, they had dinner there, or lunch.

Q. That was somewhere about what time?

A. I don't remember the time.

Q. Doesn't your record show? A. No, sir.

Q. What is there at 78?

A. A section-house there and water-tank.

Q. When you left there state if you took anybody aboard.

Mr. BORYER.—We object to that as irrelevant

(Testimony of O. L. Larson.)

and immaterial and tends to prove nothing under the issues and pleadings.

Objection overruled. Defendant allowed an exception.

A. I don't remember whether they took anybody aboard the rotary or not—I don't remember picking up anybody myself on the train.

Q. You don't remember? A. No.

Q. What time did you get to Teikhell?

A. 5:45 A. M., January first.

Q. 5:45 A. M., January first—that was the time the local left there? A. Yes.

Q. Is that the end of the line?

A. That is generally the end of the line for a rotary but the local goes through to Chitina.

Q. Did the local go through at that time?

A. No, sir.

Q. You say it was the end of the line for the rotary? A. It is as a rule, yes.

Q. Do you know what the rotary crew were doing after they got [64—13] in? A. No, I do not.

Q. What did you do?

A. Well, I don't remember just what we did do there. If I remember right, there was a train came down from Chitina and we transferred our passengers and baggage and waited for the rotary to get ready to leave again.

Q. What time did you leave there coming back?

A. Four o'clock P. M.

Q. Afternoon? A. Yes, sir.

Q. That was January first? A. Yes, sir.

(Testimony of O. L. Larson.)

Q. When you came back, what engines and cars came back with you?

A. I believe I had one car and a coach besides the engine; that is all.

Q. What engines came back? Just tell the jury what that train, beginning at the front end of it that came back, consisted of.

A. A coach, one box-car, and engine 102.

Q. Anything ahead of the local?

A. The rotary was ahead of them.

Q. What was behind the rotary?

A. Two engines and a caboose.

Q. The same equipment and all that went up?

A. Yes, in the rotary outfit.

Q. The same crew?

A. Yes, the same crew.

Q. Now, how far is Teikhell from the place where you stopped to get water? [65—13]

A. The place we stopped to get water at is Mile 76 and Teikhell is 101, about 25 miles.

Q. Do you know what time you reached this trestle on your return? A. Coming down?

Q. Yes. A. Between 7:30 and 7:35.

Q. In the afternoon—in the evening?

A. Yes, sir.

Q. When you reached that place did anything happen?

A. Yes, we stopped pretty quick, we stopped all at once when we reached there.

Q. You stopped all at once? A. Yes, sir.

Q. Do you know what caused that stopping?

(Testimony of O. L. Larson.)

A. The rotary going through the bridge—over the side of it rather.

Q. What was the first thing that indicated to you that the rotary had gone through the bridge?

A. I didn't know it had gone through the bridge until I got out and looked.

Q. What was the first thing?

A. The train stopping all of a sudden.

Q. You got out then? A. Yes, sir.

Q. Where did you go?

A. Went down towards the head end.

Q. When you got around there what did you find, what did you see?

A. I see the rotary lying there on her side. [65—
14]

Q. Which side? A. The right side.

Q. Is that all you saw?

A. I saw some of the boys come running back and hollering the rotary was in a ditch down there.

Q. Did you go up to it?

A. I started back to the coach then; one of the boys said he wanted an ax there to cut the cab open on the rotary.

Q. Did you get the ax? A. Yes, sir.

Q. And come back with it?

A. I gave it to Jimmy Arnott and he took it back there.

Q. Did you go back at all?

A. Yes, I went back that way.

Q. What did you see?

A. I see them digging around there, trying to get

(Testimony of O. L. Larson.)

Albright out when I got there.

Q. Who was Albright?

A. He was fireman on the rotary.

Q. Did you see him?

A. I didn't see him; no.

Q. Is that all you saw?

A. I saw a lot of men around there working away, chopping away on this cab down there—I saw a lot of the boys working around there, around the rotary, chopping open the cab to see if they could find Reed around there and one or two of them packing the pilot back to the coach, Holden.

Q. Holden was pilot on the rotary?

A. Yes, sir.

Q. And you saw them packing him back?

A. Yes, sir. [67—15]

Q. Did you ascertain what caused the rotary to go through?

A. Someone told me it went through the bridge there and the bridge had been burned.

Q. The bridge had been burned? A. Yes, sir.

Q. Did you see how much of it was burned?

A. No, sir.

Q. After that what did you do?

A. Well, we tried to get communication with the superintendent's office and went to the telephone and Mr. Barry was there I believe at the time and he was talking to the superintendent's office, if I remember right, and we got Mr. Wilson; myself and Mr. Townsend and someone else decided to get out of there as soon as we could on account of stalling—so we

(Testimony of O. L. Larson.)

wouldn't get our trains stalled in there.

Q. Did you get Mr. Reed?

A. No, sir, we didn't get him.

Q. He was left there under the rotary?

A. Yes, sir.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. You say you left here what time, on the morning of the 31st?

A. Left here at one P. M. on the 30th.

Q. On the 30th—1 P. M.? A. Yes, sir.

Q. How far did you go on that day, on the 30th?

A. I don't remember how far we did go.

Q. Did you go as far as Miles Glacier?

A. On the 30th?

Q. Yes. [68—16]

A. Yes, we got that far, I am pretty sure.

Q. Did you go as far as 55?

A. I don't remember.

Q. Where did you eat dinner that night?

A. I don't remember.

Q. Did you stop that night?

A. Well, we made several stops along the road.

Q. Why did you stop?

A. Because we had to stop if the rotary stopped. I suppose they stopped to do a little work on their rotary and one thing and another.

Q. About how many times did you stop?

A. I don't know.

Q. Can't you give us any idea as to how many times

(Testimony of O. L. Larson.)

you stopped? A. I don't know at all.

Q. You didn't reach Bridge 75A until what time?

A. I don't remember just the time we reached there—it was some time between—before midnight.

Q. About midnight the next night I believe you said?

A. Something like that. I believe it was before midnight—it was some time before midnight, if I remember right.

Q. That is 75 miles from Cordova?

A. It is on Mile 76, that bridge is, if I remember right.

Q. Then that means that it is 76 miles from Cordova, the place where you left on the afternoon of the 30th? A. Yes, sir.

Q. Cordova is your starting point? A. Yes, sir.

Q. And that is known as Mile 1, is it not?

A. Yes, sir, Mile 1.

Q. And the line and bridges are numbered by miles from Cordova, [69—17] are they not?

A. Yes, I believe they are.

Q. Then you arrived at Bridge 75A the next night at midnight?

A. I didn't say midnight; some time before midnight—I don't remember just what time it was.

Q. Would you say 9 o'clock?

A. I couldn't say at all.

Q. It was after dark? A. Yes, it was dark.

Q. It was after seven or eight o'clock?

A. It might have been, yes.

Q. What is the usual time or run of your train from Cordova to that point, about how many hours?

(Testimony of O. L. Larson.)

A. That depends on how much snow we find along the line there. Without a rotary or if the conditions are good we make it in four or five hours and from that up to 24 hours; we never can tell.

Q. Four or five hours when you don't have snow to fight?

A. Yes, when everything is clear we can make it in four hours.

Q. That would be your usual running time when you are out fighting snow, would it not?

A. Something like that; yes.

Q. Do you know whether you stopped that night or not, that is, if you stopped your train?

A. We stopped several times along the road I remember.

Q. For what period of time would you say?

A. I don't know.

Q. Why did you stop?

A. We stopped because the rotary stopped—we couldn't go by them.

Q. Why had the rotary stopped? [70—18]

A. I don't know.

Q. Were you fighting snow? A. We were not.

Q. Was the rotary fighting snow?

A. I suppose they were; yes.

Q. I will ask you the weather conditions at that time, on that day, if you know?

A. I don't remember just what the weather conditions were going up.

Q. It was during the stormy season, was it not?

A. Yes, sir.

(Testimony of O. L. Larson.)

Q. Now, I will ask you if it is not dangerous to stop your rotary at any point between Mile 27 and 75 when you have similar weather to what you had that night?

A. If the weather is bad and the snow drifting bad, of course it ain't a very good plan to stop very long at a time.

Q. Is it a good plan to stop a few minutes?

A. You can stop a few minutes all right, but not very long if it is drifting there.

Q. Why is that?

A. It is liable to snow in on you and you can't get a good start very well.

Q. And you are liable to be stalled there and kept there? A. Yes, sir.

Q. That has been your experience with that train over that roadway in bad weather, has it not?

A. Yes, sir.

Q. Then I will ask you if in your opinion it was not necessary that this rotary should be kept going during the hours that it worked on this particular trip?
[71—19]

A. Well, it was necessary to keep it going, yes, as much as they could.

Q. And I will ask you if it was not necessary that your train be kept as close to that rotary as it was possible to keep it, in order to prevent the snow drifting in between you and the rotary and blocking it, blocking your train?

A. We always try to work it that way, yes.

Q. That is your object? A. Yes, sir.

Q. And that is your instructions?

(Testimony of O. L. Larson.)

A. Yes, unless it is storming bad and then we couple together.

Q. Now, then, that is the reason that you took this length of time in reaching Teikhell?

A. On account of snow, yes.

Q. On account of the snow and weather conditions?

A. And running out of water and one thing and another.

Q. You say running out of water. What do you mean by that?

A. The engine getting low on water.

Q. The engines were getting low on water?

A. Yes, they did, several times.

Q. Did you have any place that you could water your engines along the line?

A. Yes, there are different places along the line you can siphon water.

Q. Did you siphon up water at those places?

A. I don't know whether they siphoned it that night or not but I suppose they did.

Q. Now, do you recall if you stopped on Bridge 75A that night on your way to Teikhell, that is, when you first went over the bridge?

A. I don't remember of us stopping on there, the local. [72—20]

Q. If you had stopped there, it was not one of the regular stops, was it? A. No, sir.

Q. If the train had stopped there you would have gotten out to see why it was stopped, would you not?

A. I suppose I would.

Q. You along the line of your duty would do that?

(Testimony of O. L. Larson.)

A. Yes, sir.

Q. Do you recall that you did get out and had occasion to get out because the train stopped?

A. No, I don't remember getting out when they were on the bridge.

Q. You don't remember whether your engine stopped on the bridge?

A. I don't remember whether our engine stopped on the bridge or not.

Q. Do you know whether any other engine stopped on the bridge?

A. I suppose the rotary engine—

Q. I am asking what you know. Do you know if any other engine stopped on the bridge on your way up to Teikhell, when you crossed the bridge the first time? A. No.

Q. You don't know? A. No.

Q. After you crossed that bridge, do you recall where you made your first stop? A. No, sir.

Q. Do you know whether you were at Teikhell?

A. We stopped somewhere beyond the bridge, north of the bridge there.

Q. Approximately how far, about? [73—21]

A. I don't know how far it was.

Q. Would you say a couple of miles?

A. No—we did stop about two miles from there afterwards, yes, 78.

Q. I am trying to get at your first stop after crossing the bridge.

A. I don't know where we stopped first.

(Testimony of O. L. Larson.)

Q. But you did stop? A. We stopped; yes.

Q. Then did you back up? A. We backed up.

Q. When you stopped there, did you inquire why you stopped? A. No, sir.

Q. Did you move your train then, either forward or backward?

A. If I remember right, we backed up after they made the stop there.

Q. How far back did you back?

A. We went south of the bridge there, I forget just how far—it was a place we could unload some coal off a car I had on the train.

Q. You went back south of the bridge—by south of the bridge you mean— A. This side of it.

Q. You recrossed the bridge and came on the side of the bridge toward Cordova, your starting-point?

A. Yes, sir.

Q. Now, then, about how far off of that bridge, off on the side toward Cordova, did you stop your train, approximately?

A. I don't remember just how far it is there.

Q. But you got your train off the bridge?

A. Yes, sir. [74—22]

Q. And you unloaded some coal there?

A. We unloaded some coal; yes.

Q. Where did you unload this coal?

A. We unloaded it on the side, on the snow bank.

Q. Was this coal consigned to anyone, or what was it? A. I think it was company coal.

Q. Bulk coal or sack coal? A. Sack coal.

Q. Is there any section-house there? A. No, sir.

(Testimony of O. L. Larson.)

Q. Why did you unload this coal?

A. We unloaded it for the rotary.

Q. And after you had unloaded this coal, did you remain,—did you let your train remain in the same position? A. No, sir, we backed up again.

Q. You backed further back towards Cordova?

A. Yes, sir.

Q. What was following you as you backed across the bridge toward Cordova? A. The rotary outfit.

Q. Did the rotary outfit come back to the point where you had discharged this coal? A. Yes, sir.

Q. What was done by the rotary at that place?

A. The section men put this coal on the rotary, if I remember right.

Q. How long were you discharging this coal?

A. I don't remember just how long it was.

Q. Have you any idea how much you discharged?

A. Twenty sacks.

Q. Then these sacks of coal that you had discharged were put [75—23] back onto the rotary?

A. I suppose it was,—it was for the rotary.

Q. Now, then, what did the rotary next do, if you know?

A. Went ahead again, as far as I remember.

Q. Do you recall how far? A. No, I do not.

Q. Do you know where it went?

A. It went ahead, I know—I don't know just how far they did go.

Q. Did it go on to Bridge 75A?

A. It went on it; yes.

Q. They went on Bridge 75A? A. Yes.

(Testimony of O. L. Larson.)

Q. Do you know what they did on Bridge 75A?

A. No, sir.

Q. Were you up there at any time? A. No, sir.

Q. While they were stopped there? A. No.

Q. While they were on Bridge 75A where did you have your train? A. Had it in the rear of their's.

Q. Was it at some point where you had moved to after discharging your coal?

A. I don't remember whether we stayed back there or pulled up.

Q. Do you know how far up you pulled?

A. No, sir, I don't remember.

Q. Was your engine on the bridge at that time?

A. I don't remember.

Q. Who was your engineer?

A. Frank Townsend.

Q. Your fireman? A. Jack Terry. [76—24]

Q. How long did you remain at this position, before you moved your train again?

A. I don't remember just how long it was.

Q. About how long would you say, approximately?

A. It might have been two or three hours.

Q. You were two hours?

A. We were two hours, yes—I don't remember just what the time was.

Q. You think it would be around about two hours?

A. It might have been; yes.

Q. What work, if any, did you do during that time, during those two hours?

A. We didn't do any work that I remember of.

Q. Just stayed on your train? A. Yes.

Q. Do you know where the engineer was?

(Testimony of O. L. Larson.)

A. I suppose he was on his engine.

Q. That was his place? A. Yes, sir.

Q. Do you know where the fireman was?

A. On the engine.

Q. Who was your brakeman?

A. We had Jimmy Arnott and George Bibber, I think it was.

Q. Where was your brakemen?

A. They were around the train there somewhere—sometimes one was up at the head and sometimes he would come back at the rear, when we were standing still; one was on the engine.

Q. One was on the engine?

A. I suppose he was. I don't remember where he was at the time. [77—25]

Q. What would he be doing up there?

A. I don't know what he was doing,—sticking around in case something was wanted.

Q. Was there one of the brakemen to the rear?

A. Yes, one of them.

Q. Which one was to the rear? A. Arnott.

Q. As soon as you stopped your brakeman went to the rear of the train?

A. One was back at the rear all the time, unless there was work to do at the head.

Q. Who was that?

A. Jimmy Arnott was in the rear.

Q. Did you take water there?

A. I don't remember of our taking any water there.

Q. I understand, then, that you arrived at Bridge

(Testimony of O. L. Larson.)

75A some time between nine and twelve o'clock of the next day?

A. I don't remember just the exact time it was.

Q. But you spent approximately two hours watering the rotary at bridge 75A and taking this coal?

A. I don't know how long it did consume to do the work there. It might have been two hours and might have been five.

Q. After you started from bridge 75A, I understand you did not get to Teikhell until the next morning at 5:45. Is that correct?

A. That is the way I have got it in my trip-book.

Q. What is the distance from bridge 75A or 76 as you call it to Teikhell? A. About 25 miles.

Q. Then you were at least 5 hours going from this bridge to [78—26] Teikhell?

A. Yes, we were that much anyway. I don't remember how long it was.

Q. In going 25 miles?

A. I don't remember how long a time it was to get there.

Q. Did you run slowly?

A. Well, we didn't run very fast, that's a cinch.

Q. You were fighting the snow?

A. Yes, the rotary was.

Q. Now, when you got to Teikhell, what did you do?

A. If I remember right, I think there was a train down there from Chitina and we transferred our passengers and baggage and mail and whatever we

(Testimony of O. L. Larson.)

had and then waited for the rotary to get ready to return.

Q. Why didn't you go on to Chitina?

A. Because we were ordered to stay there.

Q. Do you know why?

A. I don't know why.

Q. How long were you in transferring your passengers—how many passengers did you bring down, approximately? A. Coming down from Teikhell?

Q. Yes.

A. I don't remember how many there were now.

Q. Quite a number, was there?

A. There was probably a dozen, if I remember right.

Q. Probably a dozen passengers? A. Yes, sir.

Q. Did you transfer your freight?

A. We transferred everything, yes.

Q. Was there any freight?

A. He took the cars I had. [79—27]

Q. You just exchanged the cars then?

A. Yes, took everything that went through, yes.

Q. You pulled up and let them take all the freight-cars you had and you hooked on to their passenger coach?

A. We kept our own coach—took the same coach we had going up.

Q. Just detached your engines—that is, you switched your cars out, hooked on to your passenger coach and then you were ready to leave, were you?

A. Yes, sir.

Q. You didn't get out of there until the next day

(Testimony of O. L. Larson.)

at 4—on that same day, about 4 P. M., as I understand? A. Yes, sir.

Q. About how long did it take you to do this switching? A. What switching is that?

Q. Transferring.

A. I don't remember just how long it did take. I don't know how long it was there.

Q. How long does it ordinarily take to transfer five cars?

A. It don't take long—half an hour probably.

Q. And you figure that is about the time it took you to transfer on this day?

A. I don't think it took any longer than that,—our transferring. I don't think it takes over half an hour to transfer what passengers we had and mail and baggage we had and one thing and another.

Q. Then on your way down from Teikhell to Bridge 75A—you came down in about one hour and three-quarters; is that correct?

A. Something like that,—two hours probably.

Q. Can you give any idea why it required you over five hours [80—28] to go from Bridge 75A to Teikhell going out and only about one hour and a half or three-quarters coming back?

A. Yes, sir, the rotary had fought the snow going up and coming back it was all clear.

Q. Then you were fighting snow from Bridge 75A up to Teikhell—the rotary outfit was?

A. Yes, sir.

Q. Now, when you reached Bridge 75A, your train was suddenly stopped and you left your train and

(Testimony of O. L. Larson.)

came down and found your rotary in the creek?

A. Yes, sir.

Q. Under the bridge at 75A?

A. It wasn't under the bridge, no—it was out to one side of the bridge.

Q. At the point where you had taken water the night before?

A. I don't know whether they took water or not,— I suppose they did.

Q. You saw the rotary? A. Yes, sir.

Q. What was the condition of the weather?

A. I don't know just what the weather was. It seems to me it was blowing and snowing a little at the time.

Q. It was snowing and blowing a little bit at the time? A. Yes, sir.

Q. What creek is that, do you know?

A. I don't know.

Q. Is it a glacier stream?

A. I believe it is, yes—there is a glacier right near there.

Q. Was it frozen over?

A. It was, yes. [81—29]

Q. Were you on the bridge or on the ice that night? A. Yes, I was down near the rotary.

Q. Down near the rotary? A. Yes.

Q. How far was the rotary from the bridge?

A. Not over three or four feet I don't think.

Q. It fell to the right of the bridge?

A. Yes, sir.

Q. At the beginning of the bridge?

(Testimony of O. L. Larson.)

A. Yes, right off the bridge.

Q. Right at the bridge?

A. Right off the bridge, yes.

Q. Did you see any fire there?

A. I did not,—not that I remember of.

Q. Did you look to see what was the cause of the rotary having been derailed there?

A. I see there had been a fire there—the ties were all charred up.

Q. The ties were charred? A. Yes, sir.

Q. Had the rails spread?

A. Why, yes, the rails were spread out, sure—nothing to hold it.

Q. Were the pilings or were any other timbers there burned that you noticed?

A. I didn't notice.

Q. And from what you saw and the conditions of things there you thought that there had been a fire which caused the rotary to overturn?

A. I suppose that was it, yes—the bridge had burned.

Q. Did you see any indications of anything else that might [82—30] have caused the rotary to be derailed there? A. No, sir.

Q. Then, in your opinion that was the cause of the derailment of the rotary? A. Yes, sir.

Q. Now, then, how long did you remain there?

A. I don't remember just how long we were there after the rotary went through, but it wasn't very long.

Q. The rotary went over something like a little

(Testimony of O. L. Larson.)

after seven, I believe?

A. Between 7:30 and 7:35.

Q. You went down and tried to rescue the rotary crew, did you?

A. I started down there; they already had the pilot out of there and one or two of the boys were trying to get Albright out at the time I got down there.

Q. The pilot—who was he? A. Mr. Holden.

Q. Kenneth Holden? A. Yes, sir.

Q. And Albright—is that Herman Albright?

A. Yes, sir.

Q. What position did he hold on the rotary?

A. Fireman.

Q. And you say that Mr. Reed, J. E. Reed, was the engineer? A. Yes, sir.

Q. You did rescue Mr. Holden and Mr. Albright?

A. I did not, myself, personally, no.

Q. You were all working there together?

A. Yes, sir.

Q. Did you rescue Mr. Reed?

A. We did not get Mr. Reed out at all at that time. [83—31]

Q. Why not? A. We couldn't get him out.

Q. You couldn't get him out?

A. No, we couldn't get him out.

Q. Did you try?

A. Yes, we tried, to; yes.

Q. Did you do everything in your power, that you could do?

A. They done all they could, as far as I know.

(Testimony of O. L. Larson.)

Q. Everybody was trying to rescue him?

A. Yes, sir.

Q. You did everything you could do?

A. Yes, sir.

Q. Then you left there what time?

A. I don't remember just what time it was when we did leave there.

Q. Approximately?

A. Probably an hour or two afterwards, I guess—it wasn't much more than that.

Q. Just tell the jury why you could not rescue Mr. Reed.

A. I don't know just why they couldn't—because they couldn't get hold of him, that is all; they didn't know just where he was located under the boiler—under the rotary, rather.

Q. Was the boiler under the water?

A. Part of it was, yes.

Q. But every effort was made that could possibly be made to rescue him, was it not?

A. As far as I know, it was.

Q. You were there in charge of the train?

A. I was in charge of the train I had, yes.

Q. And I will ask you now if you did everything you could to render assistance? [84—32]

A. I did.

Q. Did everybody who was present?

A. Everybody around there did, as far I know—they tried to do all they could.

Q. Then you left there—I understand you to say you decided to get out on account of the storm—the

(Testimony of O. L. Larson.)

weather and the storm?

A. It started snowing, yes, pretty bad and we had to back our train through.

Q. You were without a rotary then, were you?

A. Yes, sir.

Q. And you had a lot of passengers, did you?

A. Yes, we had some passengers.

Q. Where did you go to then with your train?

A. Went back to—went clear to Chitina.

Q. You went clear back to Chitina?

A. Yes, sir.

Q. Why did you go to Chitina?

A. We decided to go to Chitina, after consultation there between Wilson, I, Barry and Townsend, concluded to go to Chitina to get water and coal and everything and wait for orders.

Q. You had a telephone in your car?

A. Yes, sir.

Q. You could communicate with the superintendent's office, could you?

A. Yes, sir, I believe we did that night.

Q. Why didn't you go on down to Cordova with your train? A. We couldn't get over the bridge.

Q. And that is the reason that you did not come to Cordova? A. Yes, sir. [85—33]

Q. You went back to Chitina, and how long did you remain in Chitina?

A. Remained there, I believe, until the 16th day of January.

Q. That was on the first day of January?

A. We got up to Chitina, on the 2d.

(Testimony of O. L. Larson.)

Q. You remained there until the 16th day of January?

A. We were running between Chitina and Teikhell with the mail, that is all, but before we came through to Cordova we staid there until the 16th of January.

Q. Then you would bring mail down as far as what point? A. Teikhell.

Q. How many trips did you make to Teikhell?

A. I don't remember just how many it was now.

Q. Have you your book there?

A. Yes. (Consulting book.) Made a trip on the 4th, on the 5th, 6th, 8th, 12th, 15th.

Q. What did you bring down to Teikhell?

A. Brought mail.

Q. What else?

A. Some provisions, I think it was, we brought down.

Q. For what? A. The camps.

Q. Was there a camp at Teikhell at that time?

A. Yes, sir.

Q. You made your first trip down then—what date?

A. I believe it was on the 4th of January, that is, from Chitina to Teikhell, but clear through we started on the 16th.

Q. When did you say you arrived at Chitina?

A. Arrived there 7 A. M. January 2d.

Q. When did you start out of Chitina the first time after January 2d? [86—34]

A. Started out from there on the 4th.

(Testimony of O. L. Larson.)

Q. Where did you go? A. Went to Mile 98.

Q. Did you go down to the rotary?

A. No, sir.

Q. Did Mr. Forrester come down with you?

A. I don't remember whether Mr. Forrester came down that time or not. It seems to me he did.

Q. Was Mr. Wilson with you on that trip?

A. I don't remember, I believe he was. I think he and Arnott, Jimmy Arnot, the brakeman, were there.

Q. Do you remember Mr. Forrester being on the train?

A. I wouldn't say for sure it was that train or not, but I believe it was.

Q. Do you remember unloading jacks and other equipment? A. Yes, sir.

Q. Why didn't you go on down to the rotary?

A. Couldn't go any further with the train on account of snowslides and snow on the track.

Q. There were snowslides and snow and you couldn't go back to the rotary? A. No, sir.

Q. You didn't have any rotary? A. No, sir.

Q. You seldom have use for your rotary between Teikhell and Chitina, do you?

A. Not very often unless the cuts get filled with snow so it has to be used.

Q. That is the dividing line for the snow belt?

A. Yes, sir.

Q. Then between Teikhell, clear down to Cordova, is your [87—35] snowbelt?

A. Yes, sir, down to Flag Point.

(Testimony of O. L. Larson.)

Q. And you brought Mr. Wilson and Mr. Forrester along with the equipment down as far as Teikhell?

A. Mile 98, I believe it was, at that time.

Q. And *that* that is as far as you go, was it?

A. Yes, sir.

Q. Do you know what became of Forrester and Wilson?

A. I believe they mushed down to where the rotary was, if I remember right. They left the train, anyway.

Q. What became of the jacks and the other equipment that you brought on the train that time?

A. If I remember right, I believe they hauled them down on hand sleds.

Q. That is the reason that you ran that train down, is it not?

A. That—the reason was that we hauled that stuff down as far as we could.

Q. For the purpose of getting it down to the rotary? A. Yes, sir.

Mr. BORYER.—That is all.

Redirect Examination.

(By Mr. COBB.)

Q. You spoke about fighting a storm going up, fighting snow. Had you been out on the road a few days before this train started on the 30th?

A. I had, yes. I believe that trip we got as far as Mile 51 or 52—I don't know just where it was.

Q. How long were you getting up there?

A. I don't remember just how long it was.

(Testimony of O. L. Larson.)

Q. Well, approximately?

A. I couldn't say; it might have been 20 or 24 hours. I don't [88—36] remember just how long it was.

Q. Was it that long, about? A. I don't know.

Q. Have you any memorandum showing the length of the time on that trip?

A. I will look and see.

Q. Look at your memorandum there?

A. (Consulting book.) 42 hours on that trip, I believe it was.

Q. What date was that you left here?

A. Left here on the 28th.

Q. Were you out any time before that?

A. Was out on the 26th.

Q. How far did you go that trip?

A. We left Chitina at that time.

Q. How long did it take you?

A. 19 hours that trip.

Q. Were you out before that? A. Yes, sir.

Q. What date? A. 25th.

Q. How far did you go that time?

A. Went to Chitina.

Q. How long did it take you that time?

A. 24 hours, I believe. I have got it here, 24 hours.

Q. (By Juror.) What month is that?

A. December, 1911.

Q. What was the trip next before that?

A. 24th.

Mr. BORYER.—I desire to interpose the same objection I did at first, and would like to have it under-

(Testimony of O. L. Larson.)

stood that instead of encumbering the record and interposing objections all [89—37] the time that I have entered a general objection about the time that was consumed in the running of this particular train at the time the injury happened and all similar trains running over the road, and exception.

By the COURT.—I am perfectly willing you shall have such an exception in that form, if you wish it. I think probably we have gone back far enough.

Q. At the time you left here then on the 30th, did you have any reason to believe that you would get through under 24 hours?

A. No, I did not—you never can tell how long it will take in the snow.

Q. You said something in reply to Mr. Boryer in regard to the section-men loading this coal—where were those section-men from? A. 78.

Q. They were down there to meet the train?

A. They came down there, I believe, yes—they were there anyway.

Q. Do you know whether they went back on the train or not? A. I don't remember.

(By Mr. BORYER.)

Q. How long have you been conductor on this road? A. Tenth of April, 1908.

Q. You have made a number of trips to Chitina?

A. Yes, I have.

Q. During the winter seasons? A. Yes, sir.

Q. I will ask you when you leave Cordova, if you can form any idea as to the time that it will require to run as far as Teikhell, Mile 101? [90—38]

(Testimony of O. L. Larson.)

A. That depends upon conditions—you mean in the winter-time, with snow?

Q. In the winter-time?

A. It is pretty hard to tell how long it will take when you have got snow to handle.

Q. You frequently do make that run in five hours or six hours?

A. Six or eight hours, or ten hours—have made it; yes.

Q. You make it oftener in 6 or 8 hours than you do in any other time, do you not?

A. No, sir, not in the winter-time—not when there is snow to handle.

Q. I will ask you again, if, after you leave Cordova and do get past Mile 27, if it is not necessary for the rotary to keep going in order to keep from being blocked and tied up?

A. Well, if it is storming they had better keep going, yes—if it is storming and drifting.

Q. You had charge of that train that day, did you?

A. Charge of the local, yes.

Q. Why didn't you stop that train?

A. What time?

Q. That night.

A. When the rotary went into the ditch?

Q. No, the day you left here.

A. Stop it where?

Q. Why didn't you stop that night for dinner?

A. I don't remember why we did, or if we did—I don't remember whether we stopped or not.

Q. Why didn't you tie up that night?

(Testimony of O. L. Larson.)

A. We had been running right along all the time following the rotary—as long as they keep working we keep following them. [91—39]

Q. And you were following the rotary?

A. Yes, sir.

Q. If the rotary had stopped, would you have stopped?

A. We would stop if they stopped; yes.

Q. You would have to? A. Yes, sir.

Q. Did the rotary stop?

A. They made several stops along there.

Q. Did they stop for the night?

A. No, they did not stop for the night, that I remember of.

Q. You would certainly remember if they stopped or not?

A. They didn't tie up for rest as I remember of; no.

Q. Now, just tell me what you mean, that you didn't tie up for rest.

A. Stopping your work to go and take a sleep for themselves, that is what I mean by tying up for rest.

Q. While you were moving along where were your brakemen?

A. One in the coach and one up in the engine, as I remember.

Q. What was he doing in the engine?

A. That is where he is supposed to be, the head brakeman.

Q. Where were you? A. Back in the coach.

Q. Then you don't know whether you kept run-

(Testimony of O. L. Larson.)

ning that night or not?

A. We kept going as far as I can remember.

Q. And yet it took you this time to go to Mile 75A?

A. It did; yes.

Mr. BORYER.—That is all.

Witness excused. [92—40]

[Testimony of Henry Lee, for Plaintiff.]

HENRY LEE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Henry Lee.

Q. Where do you reside? A. Cordova.

Q. How long have you resided here?

A. About five years.

Q. What is your occupation?

A. Locomotive engineer.

Q. Where are you employed now?

A. By the Copper River & Northwestern Railroad Co.

Q. How long have you been employed on that road? A. About five years.

Q. How long have you been an engineer on it?

A. Five years; hardly five years, it lacks a few days, I suppose of being five years.

Q. How long, then, have you been an engineer, how long have you followed that vocation?

A. Since 1903.

Q. About ten years? A. Yes.

Q. Were you in the employ of the Copper River &

(Testimony of Henry Lee.)

Northwestern Railway Co. in the months of December, 1911, and January, 1912? A. I was.

Q. Engaged in driving engines from here out over its line of road to the interior? A. Yes, sir.

Q. Could you state approximately how long it would take you to [93—41] take an engine through at that time to Teikhell, in the month of December—to Teikhell. A. No, I could not.

Q. It varied? A. It varied a great deal.

Q. Were you on the train that left here on the 30th day of December, 1911, for Teikhell? A. Yes, sir.

Q. Whereabouts were you on the train?

A. I was running a pusher engine on the rotary.

Q. Was there more than one pusher engine?

A. Yes, sir.

Q. How many? A. There were two.

Q. Which one were you on?

A. I was on the head pusher.

Q. About what time as you recall it did you get out of here?

A. My slip shows we got out of here about 11:45—that was the time it called for. Sometimes we were delayed, though, did not get out until later.

Q. 11:45 of what day?

A. On the 30th of December.

Q. You left, then, some time before the local train that was following you left? A. Yes, sir.

Q. What was there went up with you? Tell the jury, so they will know—you were on the first pusher engine? A. Yes, sir.

Q. There was one following you?

(Testimony of Henry Lee.)

A. Yes, sir. [94—42]

Q. What was ahead?

A. The rotary was ahead and I was coupled in next and another engine behind me, and then the caboose.

Q. Do you know who composed the crew of the rotary? A. I do.

Q. Who were they?

A. There was Reed was the engineer, Holden was the pilot and Mr. Wilson was the conductor, and I was the engineer and my fireman was Theile and Dan Barrett was the engineer on the second pusher and Kitsman was his fireman, and I am not certain about the brakeman that was on for us—I think George Scott was, though.

Q. And Wilson, this gentleman here, who is now trainmaster, he was conductor? A. Yes, sir.

Q. Was that the entire crew?

A. We had a watchman with us.

Q. Do you know who that was?

A. Taylor was his name.

Q. There was a fireman on the rotary, was there not? A. Yes, sir, Herman Albright.

Q. That made up the entire crew? A. Yes, sir.

Q. Were you all on duty when you left?

A. All but the watchman were on duty.

Q. Do you recall getting to a trestle near Mile 76, between 75 and 76? A. I do.

Q. About what time did you reach there, Mr. Lee?

A. Well, we reached there somewhere near 9

(Testimony of Henry Lee.)

o'clock—something after 9 o'clock. [95—43]

Q. What day?

A. It was on January first— Let me see (consulting book).

Q. Look at your memorandum.

A. The 31st of December.

Mr. BORYER.—Will you allow me to see **that** memorandum that you are refreshing your memory by?

The WITNESS.—Yes, sir, you can see it. (Hands to Mr. Boryer.)

Q. That memorandum is a memorandum you made at the time?

A. Yes, sir, just the stubs of my slips.

Q. It is a memorandum made at the time,—such memorandum as all trainmen, engineers and conductors keep? A. Yes, it is just the stubs.

Q. You reached there some time you think about 9 o'clock on the 31st?

A. Some time after 9 o'clock. I think it was between 9 and 10.

Q. Between 9 and 12?

A. Yes, it wasn't as late as 12 o'clock.

Q. But you are certain it was between those limits? A. Yes, sir.

Q. Now, tell the jury whether or not the train crews, the crew you have mentioned on the rotary and pusher engines, had been continuously on duty since they left Cordova? A. Yes, sir.

Mr. BORYER.—I object to that—make the same objection.

(Testimony of Henry Lee.) ¹

Objection overruled. Defendant allowed an exception.

Q. Now, when you reached there I want you to tell the jury just exactly what was done by the train in regard to stopping, coaling, etc. Tell just what was done at that bridge.

A. In the first place, we passed the bridge, went over the bridge and got stalled at Mile 77 in a snow drift. Reed ran out of water on the rotary and he came back and asked [96—44] me if I could spare any water out of my engine, from my tank, and I told him I thought I could, and I went back and measured my water and told him I could give him a little, and I went down and took some hose down and started to connect up the hose to siphon water from my tank, and it took more water hose to reach his tank, so I went back and got the water hose off of Barrett's engine to couple them up, and when we tried to use it I found that his hose was frozen up, and in the meantime the section-man came up from 78 and he asked about the water, where we could get water, and he told us we could get plenty of water back at 75A. We were in doubt about it, we didn't think we could get it, but he told us we could and we went back there to get water.

Q. And you backed there for the purpose of getting water? A. Yes, sir.

Q. What was done when you got back there?

A. We backed on to the bridge and connected up our hose and siphoned water.

Q. To what engine? A. To the rotary engine.

(Testimony of Henry Lee.)

Q. Any other? A. I don't think so.

Q. The others had plenty at that time?

A. Had enough to make 78.

Q. How long were you getting this water?

A. I should think about an hour or a little more.

Q. During that time where was the rotary and the hog engines that were pushing—I believe you call them hog engines? A. Some do; yes.

Q. Where were the rotary and the hog engines with reference to [97—45] the bridge,—were they on it or off of it?

A. They were on the bridge, standing near the north end of the bridge, the rotary was.

Q. Then after you got this water siphoned into the rotary, what did you do—the next thing?

A. We backed up south of the bridge and took on some coal that had been thrown off the local.

Q. Thrown off the local for the rotary?

A. Yes, sir.

Q. After that, what was the next thing done?

A. We proceeded on to 78.

Q. You pulled up and went on by the bridge?

A. Yes, sir.

Q. And went up to 78? A. Yes, sir.

Q. And you left this bridge—Did you see any section-men around?

Mr. BORYER.—We object to that as incompetent, irrelevant and immaterial and does not tend to prove anything along the issues of the case.

Objection overruled. Defendant allowed an exception.

(Testimony of Henry Lee.)

Q. Did you see any section-men around?

A. I did—at the time we were there, not when we were leaving.

Q. At the time you were there you saw some?

A. Yes, sir.

Q. You didn't see any when you were leaving?

A. No.

Q. You don't know whether they remained there or not? A. No, I do not.

Q. Do you know anything about any ashes being cleaned from [98—46] any of the engines there?

A. I didn't see any ashes.

Q. You didn't see any ashes? A. No.

Q. At the time did you hear anything said about it? A. I did.

Q. Tell the jury what it was.

Mr. BORYER.—We object to that as incompetent, irrelevant and immaterial and not the best evidence.

Objection sustained.

Q. When you got up to 78, what did you do?

A. We stopped there and had supper and coaled up in the meantime, coaled up the rotary—we took on more coal.

Q. Then where did you go?

A. Went on to Teikhell.

Q. What time did you reach Teikhell, about?

A. I don't remember the time we reached Teikhell. My slips show we tied up at 9 o'clock, quit work at 9 o'clock that night.

Q. That is, if you got in there at 5:45, as shown by Mr. Larson's slips, you were on duty up to 9?

(Testimony of Henry Lee.)

A. 9 A. M., I should say—not 9 at night, but 9 in the morning.

Q. What time did you leave there?

A. We were called for one P. M. but we left later on,—we didn't leave that soon. How late I don't remember.

Q. You don't remember that it was 4 o'clock—your slips don't show?

A. No, my slip doesn't show what time we were leaving.

Q. What time did you go off duty and go to rest there? A. 9 o'clock.

Q. But you didn't keep any memorandum of the time you pulled [99—47] out?

A. No, I did not.

Q. (By JUROR.) Was this 9 o'clock in the morning of the 31st? A. Of January first.

Q. Now, when you left, what time did you get back to this bridge?

A. Near 7:30—I didn't look at the exact time.

Q. Did anything happen then?

A. Yes, sir, the rotary just turned over on the bridge.

Q. Did you see it go over? A. I did.

Q. Did your engine go over? A. No, sir.

Q. About what speed had you been running on that return trip?

A. Oh, seven or eight or nine miles an hour—you mean when we struck the bridge?

Q. Yes.

A. Somewheres along seven or eight or nine

(Testimony of Henry Lee.)

miles an hour.

Q. Not running very fast? A. No, sir.

Q. Did you get out of your engine? A. I did.

Q. Now, just tell the jury what you did and what you saw there, of this accident.

A. I was looking out and noticed the rotary make a lurch, and I set the air, tried to stop, thinking the rotary was off the track, and by that time the wheels had struck the bad track and it tipped over. I got off the engine as quick as I could and started down there and happened to think I didn't have a light with me, and went back to the cab to get a light and go back there, and I got a torch and started with it and it blew out. [100—48]

Q. Proceed.

A. And I went back and got a lantern and went down there and I found the fireman with his leg partly buried up with coal. He was standing up and I helped dig on him a while and quite a number got around and I see I couldn't do anything to help him any, and I went around to see what had happened to the other fellows, and they were taking Holden out, out of the pilot-house, through the window, and after we got those boys out, why we began to hunt for Reed—look for Reed.

Q. Did you find him?

A. No, I didn't find him—one of the boys got hold of his hand.

Q. Where was he?

A. He was under the engine and the cab roof was lying over—we were working in between the cab

(Testimony of Henry Lee.)

roof and the top of the engine, feeling around for him, and one of the boys got hold of his hand, about two feet under water—about 18 inches, not two feet.

Q. Could you get him out? A. No, sir.

Q. Now, Mr, Lee, you have been on a rotary quite a while? A. Yes, sir.

Q. And have driven the engine on them?

A. Yes, sir.

Q. Now, I want you to explain just what the crew of the rotary consists of and where they stay and how it is built, so that the jury will have some conception of it.

A. Well, the engine is all housed in, about the same as a locomotive only housed in, a cab built over the entire length of it. How was that question?

[101—49]

Q. Just describe it to them. What the crew consists of and where each one stays, and how the house on it is constructed with reference to the place where each man's duties call him.

A. It is housed in, a cab the entire length of it. The pilot is up in front; he transfers the signal by bell from the pilothouse to the engineer. The engineer stands on the right-hand side, about the centre of the engine and the fireman is at the rear of the boiler.

Q. These three constitute the crew?

A. Yes, sir.

Q. Now, tell the jury whether or not the engineer can see out at all.

(Testimony of Henry Lee.)

A. Why he can, out of a window right alongside of him.

Q. Can he see ahead?

A. No, he couldn't see ahead.

Q. State whether or not the compartment where he stays is separated from the compartment of the fireman.

Mr. BORYER.—We object to that as leading.

Objection overruled. Defendant allowed an exception.

A. Well, there is a long alley-way from him to the fireman—it is not exactly separated from him, I shouldn't say.

Q. What sort of an alley-way is that?

A. It is just about that wide (indicating)—runs alongside of the boiler, between the cab and the boiler, back.

Q. From where he is you can't ordinarily see the fireman? A. No.

Q. Is there a door in that alley-way?

A. I am not sure whether there is a doorway in that or not,—I don't think so. [102—50]

(12 o'clock. Recess until 2.)

AFTERNOON SESSION.

Continuation of the Direct Examination of HENRY LEE.

(By Mr. COBB.)

Q. I believe you stated this morning that you were unable to get Mr. Reed out from under the rotary—you reached that point in the testimony.

A. Yes, sir; I believe so.

(Testimony of Henry Lee.)

Q. When the rotary went off, did you go around in front—when the rotary went off the track?

A. Yes, I was around in front of the rotary.

Q. How soon after the accident?

A. Probably ten or fifteen minutes.

Q. Now, I want you to tell the jury if you observed the track, what was the matter with it?

A. Why, the ties and the top stringers were burned under the rail, on the right-hand side as you come south.

A. On the right-hand side as you came this way?

A. Yes, sir.

Q. That would be the west side of the track?

A. Well, I don't know the directions. I suppose—yes, you would call it the west side of the track.

Q. When you were going up on that train, the rotary and the two pusher engines were going up and stopped at this trestle; do you know anything about any fires being cleaned there or ashes taken out?

A. Well, I heard them cleaning the fire, that is, I heard them talking of it. I didn't see them cleaning it.

Q. Did you hear them cleaning it?

A. No, I heard them say they would clean the fires.
[103—51]

Q. Was the fire still burning when you got back there in front, on the trip down?

A. Yes, there was a slight fire.

Q. About how much of that track, on the right-

(Testimony of Henry Lee.)

hand side of the track, as you come this way, had been burned?

A. I didn't go by the bridge. I should judge from where I looked at it it would be thirty or forty feet. I didn't go over to see it, though.

Q. Thirty or forty feet. Was the entire track burned, or just one side? A. Just one side.

Q. That was the right-hand side, as you came this way? A. Yes.

Q. What kind of a pan was there under the rotary—ash-pan? A. It was a hoe-pan.

Q. I want you to explain to the jury what you mean by a hoe-pan?

A. Sometimes they are self-dumping—you use a lever to dump. In some you shake the ashes down and have to hoe them out from the rear or side; this rotary was a hoe-pan, hoed out from the side.

Q. To which side of the engine on the rotary would you pull the ashes with the hoe when you cleaned it?

A. You would pull them to the right side.

Q. (By the COURT.) What do you mean by right side?

Mr. COBB.—The right side of the rotary.

By the COURT.—Right side, which way?

The WITNESS.—The right side of the rotary; the rotary was headed north, and we were going north and it would be the right side of the rotary. [104—52]

(By Mr. BORYER.)

Q. Do you mean on the opposite side from the side that you spoke of that you saw the fire?

(Testimony of Henry Lee.)

A. On the opposite side?

Q. Yes. I understood you to say as you came down the ties were burned on the right-hand side?

A. Coming down.

Q. And do you mean to say that you would pull your fire out on that same side from this rotary?

A. Going up we would pull it out on the opposite side.

Continuation of Direct Examination.

(By Mr. COBB.)

Q. So if the ashes were pulled from the rotary, and they were the ashes that set fire to it, the opposite side would have been the one that was burned?

Objected to. Sustained.

Q. Would there have been any difficulty or any reason that you know of in cleaning out those engines at any other place at that time, except on the trestle?

Mr. BORYER.—We object to the question as calling for a conclusion, irrelevant and immaterial, and does not tend to prove anything as to the fire at that particular point.

Mr. COBB.—The testimony of the witness is this. These men had been on duty there at that time according to the testimony now in, for 32 hours. Mr. Boryer had stated to the jury in his opening statement that they had orders not to dump on the bridges, not to clean the fires on the bridges; there was a reason why somebody disobeyed that, and it ought to go to the jury.

By the COURT.—I think I will allow it.

(Testimony of Henry Lee.)

Defendant allowed an exception to the ruling.
[105—53]

Q. State, if you know, if there was any reason that made it particularly difficult to clean fires with this sort of ash pan at any other place.

A. The snow was deep on the side of the track, and you would have to dig out the snow on the side to get down and take out the pan.

Q. Would that condition exist on the trestle?

A. No, sir.

Q. I want you to give the jury some idea, if you can, approximately of the condition of the snow on each side of the track, how it lay on each side of the track and whether it was hard or soft.

A. Well, I should judge it was three and a half to four feet deep along there after you got off the bridge and other places deeper, but from, I think, $3\frac{1}{2}$ to 4 ft. deep, maybe deeper, and came right up alongside of the rotary, that close (indicating), where you would have to dig out considerable, and would naturally have a crust where the head of the rotary would be forcing against the snow; it would be rather hard digging right close to the track.

Q. So was it possible to clean that engine, the ashes out of that hoe-pan, without first digging out that hard crust of snow, unless you cleaned them on the trestle? A. No, not very well.

Q. How long had you known John E. Reed at the time of his death? A. I think about two years.

Q. Did you work with him?

A. Part of the time, yes, sir.

(Testimony of Henry Lee.)

Q. What sort of a man was he? [106—54]

A. In what way do you mean?

Q. I want you to tell the jury what sort of a man John E. Reed was.

By the COURT.—With reference to what?

Q. With reference to his being industrious and capable as an engineer, his habits of industry, sobriety, etc.?

A. Well, he was an industrious, good engineer, considered a good engineer, capable, and a good, honest, square man, as far as I knew him.

Q. A man of sobriety and good habits?

A. Why, I have seen him take a drink, but I have never seen the man full.

Q. You never saw him under the influence of drink? A. No, sir.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. How many years have you been an engineer?

A. About ten years.

Q. Did you ever work on any other road before you came here? A. Yes, sir.

Q. What road did you ever work on?

A. Worked on the Great Northern.

Q. How long did you work on the Great Northern?

A. From '98 up to the time I went to work here, a few months before I went to work here.

Q. How long would that be?

A. About nine years, I believe—let me see, yes, about nine years.

(Testimony of Henry Lee.)

Q. On what division were you running? [107—55] A. Cascade Division.

Q. How long did you run on the Cascade Division?

A. I ran about four years, on the Cascade Division.

Q. Were you connected with the rotaries in any way?

A. Yes, I had pushed the rotaries—been called to run one a little bit.

Q. You never ran a rotary?

A. I ran one a little; yes.

Q. How long did you run a rotary?

A. A very short time—we cleaned up the yard.

Q. At one time? A. Yes.

Q. About how long would it take you?

A. A couple of hours.

Q. Then that is the extent of the experience you had operating a rotary? A. Yes, sir.

Q. All the other time you spent there you were an engineer?

A. Yes, sir. I have run a rotary a short time, relieving someone else there on the road, but not called out to run a rotary, except this one time in the yard.

Q. How long did you say you were in getting from Cordova to Mile 75A?

A. From 11:45 in the morning until about 9 o'clock at night—the next night it was.

Q. You were on duty all that time? A. Yes, sir.

Q. Do you know if any of the other crew was on duty? A. Yes, sir; we were all on duty.

Q. What were they doing?

A. Working—bucking snow. [108—56]

(Testimony of Henry Lee.)

Q. Why did it take you so long to make this trip?

A. Heavy snow.

Q. And then you reached ridge 75A and crossed it, did you? A. Yes, sir.

Q. And how far beyond Bridge 75A did you go?

A. Well, I should judge we went about a quarter of a mile past the 76 mile board—I think it is about a quarter of a mile on to 77.

Q. The snow was hard, and you had trouble in getting through it, did you? Is that the reason it caused you so much trouble?

A. We were not having trouble. It was heavy snow—we were going right along, though, but making slow time.

Q. You were working all that time continuously, bucking snow—you want the jury to understand that you were working continuously bucking snow during that time?

A. I think from 52 up it was continuous, but from here to 52 I think it was not very heavy, but further on it was.

Q. Then most of your time was consumed from 52 up, was it? A. Yes, if I remember right.

Q. You remember it, don't you?

A. Well, it is a little bit vague in some places, because we had several hard trips at the time, and I don't exactly remember that trip, in particular.

Q. You do remember when you started out and you remember when you reached your destination,—you remember what time you reached Bridge 75A, do you?

(Testimony of Henry Lee.)

A. Yes, sir; somewhere near the time. I couldn't state exactly the time.

Q. Now, just refresh your memory a little bit, and see if you [109—57] were not doing something else besides bucking snow, from the time you left here until you reached 55, and if most of your time was not consumed between Cordova and 55—do you recall anything else?

A. No, I cannot, because there was several hard trips there, as I stated, and I wouldn't state positively about just where we were at certain times.

Q. Do you remember your rotary breaking down?

A. I do. I remember our rotary breaking down. We had two rotaries break down something about that time.

Q. Don't you remember on that particular trip your rotary broke?

A. I don't know for certain whether it was that particular trip or not. I know either that trip or the trip before the rotary broke down.

Q. Let us confine ourselves to this trip. Don't you know that your rotary broke down at Mile 52?

A. We had a rotary break down at Mile 52.

Q. What did you break at that time?

A. We broke the quarter shaft and knocked out a cylinder head.

Q. It was the rotary you were taking out that day, was it not?

A. I think it was, if that was the trip. I am not positive about that, but I think it was the trip.

Q. Do you mean to say you would have an accident

(Testimony of Henry Lee.)

like that, and wouldn't recall it?

A. Yes, this far off. I remember the trip all right. I remember breaking the rotary and returning to 39.

Q. Then it was on that trip, was it not?

A. I am not positive whether it was that trip or not, but I am rather under the impression it was.

[111—58]

Q. Now, think a little bit further and see if you cannot recall positively that it was?

A. Yes, I think it was.

Q. You broke your quarter shaft at Mile 52 and blew out a cylinder-head, is that correct?

A. And knocked out a cylinder-head.

Q. On this same trip, on your trip up?

A. Yes.

Q. Now, after you did that, what was your next step—about what time was that?

A. Well, I don't have any idea what time that was.

Q. You left here that morning about 11:45, didn't you? A. Yes, sir.

Q. At 4:30 of that same afternoon you were at Mile 52, were you not?

A. I don't know whether it was that early or not.

Q. About that time, wasn't it?

A. Perhaps so, I couldn't say positively—I don't remember the time.

Q. Within two or three hours you think it was that time? A. Yes, probably.

Q. It was somewhere around four or five o'clock.

A. Yes.

(Testimony of Henry Lee.)

Q. Could you proceed any further with your rotary? A. Yes, we returned to Mile 39.

Q. You returned to Mile 39? A. Yes, sir.

Q. Did you turn the rotary or did you back down there? A. We backed there.

Q. You backed down to Mile 39? [112—59]

A. Yes.

Q. How long did it take you to get back to 39?

A. It wouldn't take us over an hour, or an hour and a quarter to come back.

Q. Why did you return to 39?

A. We returned there because there was a water-tank there and to wait for the other rotary to come up and relieve us.

Q. This rotary was in such a condition that you couldn't use it? A. No, sir.

Q. Then you got back there between 6 and 7 o'clock with your broken rotary, did you?

A. I don't hardly think it was that early.

Q. You got back about 8:30, didn't you?

A. Probably that time.

Q. Why did you go back to 39 to wait for the other rotary?

A. Well, they gave us orders to go back there. I don't know exactly why we did go but there was a water-tank there and they sent us there, I presume, so we could get water for our engines.

Q. When you got to 39 what did you do?

A. Wilson and I helped Reed take down one side to get in shape to return to Cordova with.

Q. To return it to Cordova? A. Yes, sir.

(Testimony of Henry Lee.)

Q. Did you turn your rotary? A. Not yet.

Q. You had taken it back to 39—backed it back there? A. Yes, sir.

Q. Was there any place to turn it at 39?

A. No, we had to turn it at the glacier, Mile 49.
[113—60]

Q. You passed the place where you have to turn it? A. Yes, sir.

Q. And came back to 39 and stopped and stayed at 39?

A. We stayed there, yes, until another rotary came.

Q. When did another rotary come?

A. Some time along in the morning. I don't remember what time.

Q. Do you know the approximate time?

A. No, I couldn't say.

Q. It returned there about 3.30 in the morning, did it not? A. Probably some time near that.

Q. Now, Mr. Lee, will you just tell the jury what happened and what you were doing there that consumed your time.

A. Well, the most of the time we were lying waiting for the other rotary to come up, and while we were doing that Wilson and I were helping the engineer turn the rotary wheel, so that the engineer could take down one side and be able to run the wheel with one engine, one side of the engine, to go back to the glacier and turn around and that rotary then to come to town alone.

Q. Then you and Wilson and Reed worked on this

(Testimony of Henry Lee.)

rotary up until the time that the other rotary came, did you?

A. Not all the time; no, sir. We helped him do that and it was an hour and a half or two hours, I suppose, we were sitting there waiting,—I don't know how long Reed was working, but I quit after a while and he was still working after I quit and went back to my engine.

Q. Did Wilson stay there with him?

A. I don't know whether he stayed there or not.

Q. When you got back to your engine where was your fireman? A. On the engine. [114—61]

Q. What was he doing?

A. Sitting there, waiting,—doing nothing.

Q. Do I understand you that you were trying to repair this rotary so that it could be brought back to the terminal or the shops to be repaired?

A. Yes, sir.

Q. Then you had a breakdown with that rotary?

A. Yes, sir.

Q. And you were trying to get it back to the shops so that it could be repaired? A. Yes, sir.

Q. That was the largest rotary you had at that time? A. Yes, sir.

Q. You had one more rotary known as the small rotary? A. Yes, sir.

Q. You waited there until the small rotary arrived and then where did you connect with the small rotary?

A. We went to Mile 49, Miles Glacier, and we changed rotaries there,—took the small rotary and

(Testimony of Henry Lee.)

they returned with the large rotary to town.

Q. When you were fixing your rotary at 39 you were fixing it so that it would be able to fight any snow that it might encounter coming from 49 into the shops? A. Yes, sir.

Q. What time did you start out from Mile 49 with the small rotary?

A. I don't remember what time it was.

Q. Wasn't it about 6 o'clock in the morning?

A. It probably was. I don't remember the time.

Q. And you had arrived at Mile 54 at about 8:30 in the morning, had you not, or Mile 55, commonly called the Abercrombie [115—62] Canyon?

A. About 8:30 in the morning?

Q. Yes, about 8:30 in the morning?

A. I don't remember the time we did arrive there. I can't remember that time.

Q. You do remember you left early the next morning, though, to continue with the small rotary up the line? A. Yes, sir.

Q. And you reached Bridge 75A between 9 and 12 o'clock, you think? A. I think so.

Q. You crossed that bridge and went beyond the bridge with the rotary and the two pushers and the local?

A. Well, I am not certain about the local, but I think it followed us right up to where we got stalled.

Q. Was right behind you? A. Yes.

Q. Where did you make your first stop after crossing Bridge 75A?

A. On Mile 77, in a heavy snowdrift.

(Testimony of Henry Lee.)

Q. Mile 77—what part of 77?

A. On the south end, I should judge, about a quarter of a mile up—about a quarter of a mile on the south end of 77.

Q. Did you stop then?

A. Yes, sir, we stopped there a while.

Q. How come you to stop?

A. Well, we were in a heavy snowdrift and the engineer came back after we stopped and said we were short of water.

Q. What engineer was that? A. Reed.

Q. The engineer of the rotary? [116—63]

A. Yes, sir.

Q. Then what took place?

A. He asked me if I could spare any water from my engine. I told him I would go back and see, and I went back and measured the water in my tank and told him I thought I could give him some, told him I thought I could give him enough to get to 78, the water-tank, and I began to get the hose down to connect up, to siphon water from my tank to his rotary, but we found out that the extra hose that we got off the other pusher was frozen up and during the time we were trying to get that broke loose the section-men came and informed us we could get water back at the bridge.

Q. And then what did you do?

A. We returned to the bridge, backed up.

Q. You backed up—your train would be ahead of you, would it? That is in coming back,—you backed towards Cordova, then?

(Testimony of Henry Lee.)

A. The train was behind us.

Q. Therefore your train would be backing down ahead of you? A. Yes.

Q. You backed down to where?

A. Bridge 75A.

Q. Now, when you got to Bridge 75A, did your local go over the track, across the bridge?

A. Yes, sir.

Q. About how far would you say?

A. Well, I didn't notice how far over they were.

Q. Your rotary was on the bridge, was it?

A. Yes, sir.

Q. And where was your engine?

A. Right behind the rotary, coupled into the rotary. [117—64]

Q. Was your engine on the bridge? A. Yes, sir.

Q. How about the other pusher behind you?

A. I think they were on the bridge too.

Q. Do you know?

A. I am not positive, I didn't get off; I didn't go back that way at all. It was night and I didn't go back there.

Q. Did you get off of your engine at all?

A. Yes, I was on the ground a few minutes. Most of the time I was on my engine.

Q. You were on the ground a few minutes?

A. Yes, sir, a few minutes.

Q. How did you get on the ground?

A. Climbed out on the trestle and jumped over on to the ground.

Q. You climbed down off of your engine and

(Testimony of Henry Lee.)

jumped on to the trestle—did you jump down on to the ice then? A. Jumped down into the snow.

Q. Was that snow over the creek? A. Yes, sir.

Q. You don't know whether the other engine was on there or not?

A. No, I couldn't say positively whether it was.

Q. Are you certain you didn't have your fireman clean his pan on that bridge? A. Yes, sir, I am.

Q. Why do you know that? Why are you certain?

A. He was sitting up there on the seat most of the time we were there.

Q. While you were there? A. Yes.

Q. When you were out—you say you were out a while—don't you [118—65] think that he cleaned his fire, cleaned his pan, while you were out?

A. No, sir, I do not. I was standing right alongside of my engine and I would have seen him if he had.

Q. You didn't give him any instructions to clean it? A. No, sir, I did not.

Q. Wouldn't he clean it without instructions?

A. Sometimes; yes.

Q. Then you don't know but what he cleaned it there then, without instructions?

A. I am positive he did not clean it there.

Q. As a matter of fact, don't you know, or do you know whether you gave him instructions to clean his pan on that bridge? A. I know I did not.

By the COURT.—What is your answer?

A. I did not give him such instructions.

(Testimony of Henry Lee.)

Q. Where had you cleaned your pan on that trip?

A. I don't remember where was the last place. I don't think we had cleaned our pan since we left 55. I have an idea we cleaned the pan at 55.

Q. You are the engineer of that engine?

A. Yes, sir.

Q. Isn't it your duty to know what goes on on that engine? A. It certainly is.

Q. And wasn't it your duty to know whether you cleaned your pan at 55 or not?

A. A small matter like that I might overlook now. I probably noticed him clean it at the time but I don't remember now whether he cleaned it then or not.

Q. It is your duty to know what goes on on that engine? [119—66] A. Yes, sir.

Q. It is your duty to know whether he did clean his pan or not?

A. Yes, it is my duty to see that he cleans his pan when it needs it.

Q. And you are certain that you did not clean your pan except at 55?

A. I can't say that he cleaned it at 55,—I don't remember the circumstance.

Q. That is just because you don't recall?

A. I don't recall the time; no.

Q. You usually saw him when he did it?

A. It takes him some time and I usually saw him, because he can't do it in a few minutes.

Q. How long does it usually take?

A. Sometimes it takes twenty or thirty minutes to hoe out a pan and clean the fire.

(Testimony of Henry Lee.)

Q. Then you think you would see him?

A. Yes, sir.

Q. It is your duty to see him?

A. It is always my duty to see that he does it and see that he doesn't turn his grates and see that he is careful where he dumps his cinders.

Q. And whether he puts his fire out?

A. Yes, sir.

Q. It is your duty to see that as an engineer, is it not? A. Yes, sir.

Q. Who was your fireman that day?

A. Gus Thiele.

Q. Why would you clean your pan at 55?

A. If it was necessary to clean it we would clean it—if the pan got too full we would have to clean it wherever it was [120—67] necessary.

Q. Whenever it was necessary? A. Yes, sir.

Q. Is that the point where you usually clean your pan?

A. Well, some firemen do and others do not. Sometimes we make an entire trip without cleaning the fires, a light trip.

Q. But when you do clean your pan, you usually try to clean your pan at a point where you have water, do you not?

A. Yes, at times. Other times we will clean it where we are stopping for something or other, waiting for orders and knowing we will be there thirty or forty minutes, we will clean it.

Q. What do you do about putting your fire out?

A. Turn the hose on.

(Testimony of Henry Lee.)

Q. Turn the hose on from your engine?

A. Yes, sir, or shovel it off or something—shovel it off the track if we can.

Q. Why do you do that?

A. To keep it from catching the ties,—to keep it from burning the ties.

Q. What would be the effect if you burned the ties?

A. That is destroying company property—ties cost money.

Q. Is it liable to derail a train?

A. Yes; if there was enough ties burned it might derail a train; it is liable to derail a train if there are too many ties burned; the track is liable to spread.

Q. Is that the reason you did not clean the pan of your engine on bridges?

A. That is liable to burn the bridge out.

Q. Are you certain that your engine did not set fire to that [121—68] bridge?

A. Yes, sir, I am.

Q. You did not clean your fires on the bridge?

A. No, sir, I did not clean mine.

Q. You did not give any instructions to your fireman to clean them on there? A. No, sir.

Q. And you are certain he did not clean them on there?

A. I am certain he did not clean them.

Q. You worked on the Great Northern how many years? A. Since 98.

Q. Did you ever work on any other road besides the Great Northern? A. Yes, sir.

Q. What other road?

(Testimony of Henry Lee.)

A. Worked on the narrow gauge Pacific Coast Company railroad between San Luis Obispo and Los Angeles, California.

Q. I will ask you if it is not against the rules and regulations of any and all railroads that you ever worked on to clean your pan on bridges?

A. Yes, sir.

Q. I will ask you as an experienced engineer, if you do not consider that it is extremely hazardous and dangerous to the equipment of a road and to the traveling public to clean fires on a bridge?

A. Yes, I think it is hazardous.

Q. Extremely so? A. Yes, sir.

Q. You say that while you were stopped on this bridge that you heard some conversation regarding the cleaning of the pan of the rotary? [122—69]

A. Yes, sir—not cleaning the pan, cleaning the fire, I said.

Q. Between whom was this conversation?

A. I don't know who it was conversing at all. I was up on my engine at the time and heard some one talking. I couldn't tell who it was.

Q. You are certain it was not your fireman?

A. No, sir—it was up forward of my engine.

Q. It was forward of your engine?

A. Yes. I was sitting up on the top of my engine turning some hose on to siphon water when I heard the conversation.

Q. What was forward of your engine?

A. The rotary.

Q. Who was on the rotary?

(Testimony of Henry Lee.)

A. Well, I don't know just who was on the rotary.

Q. You had been working, pushing that rotary, for about two days, hadn't you?

A. Yes, but I wasn't on the rotary and it was dark. I don't know whether there was a soul on the rotary or not at the time.

Q. There must have been somebody there to have this conversation?

A. There was around there, there was quite a number of men—I couldn't say who they were—around the siphon hose and the water hose.

Q. Who would naturally have such a conversation regarding the rotary?

By the COURT.—That is argument.

Q. Who had charge of that rotary?

A. Mr. Reed.

Q. Who was Reed's fireman?

A. Herman Albright. [123—70]

Q. Then you backed down to this coal-pile out there that Conductor Larson had discharged from his train—what did you do down there?

A. We took some coal on for the rotary.

Q. Then you proceeded toward Teikhell, did you?

A. Yes, sir.

Q. About how much water did they take on to the rotary at that time, do you know?

A. No, I don't know how much water they took.

Q. They were working there about how long?

A. Well, as near as I can remember we must have been there an hour,—close to it.

Q. Were they taking water during this hour, the whole time?

(Testimony of Henry Lee.)

A. About the whole time we were there I think we were taking water, except when we were taking coal.

Q. I mean on the bridge—did you see them taking water?

A. Well, I could see down and they called “All right” to me when I turned on the siphon. I was at the steam valve to turn on the steam, to siphon the water with my engine.

Q. Did you have to break the ice in order to get this water?

A. I think they used the steam hose for thawing the ice, to get down to the ice.

Q. About how thick was it?

A. I didn’t go down to see how thick the ice was.

Q. About how wide was the stream?

A. I don’t know how wide the stream was.

Q. Approximately?

A. I should think there was quite a stream of water there in the summer-time—in the winter-time I don’t know.

Q. How much was there at that time? [124—71]

A. There was a good deep stream of water there. The section boss said it was a couple of feet deep but he didn’t know how wide it was. The section boss told us there was a couple of feet of water there; we only had a small hole through the ice to get the siphon into—we couldn’t see how wide it was.

Q. What side of the engine did you stand on when you were there—your engine was facing Chitina, was it not? A. Yes, sir.

Q. What is your side of the engine?

(Testimony of Henry Lee.)

A. The right side, going up.

Q. Your fireman then is on the left side?

A. Yes, sir.

Q. Were you standing at your post of duty during this time? No, sir.

Q. Where were you?

A. I was up on top of the engine.

Q. You were up on top of the engine?

A. Yes, sir, up at the steam dome, turning on the steam.

Q. How long were you up there?

A. I was there ten or fifteen minutes. I would go out occasionally and come back in—I don't know. I made a couple of trips out there on top of the engine and then came back into the cab. I came back in a couple of times.

Q. Did you see Mr. Holden while you were there?

A. No, sir.

Q. Did you see Albright while you were there?

A. I don't think I did.

Q. Did you see Mr. Reed while you were there?

A. No, sir.

Q. You were there for about an hour? [125—72]

A. I should judge so.

Q. And you didn't see either Holden, Reed or Albright?

A. Not to recognize them—I must have seen them. There was quite a number of men out on the right-hand side of the engine but I couldn't tell who they were because it was dark.

Q. How far from you were they?

(Testimony of Henry Lee.)

A. Probably 20 ft. off the side, that is, forward of me, on the side of the engine. Probably ten feet out from the track and 20 ft. forward of me,—somewhat nearer.

Q. Was it dark? A. Yes, sir.

Q. You had no conversation with Holden, Albright or Reed during that time?

A. Not that I remember.

Q. About how high is the rails of that bridge from the creek?

A. Probably some places it would be 10 ft., the most, I should judge.

Q. You would say about ten feet?

A. I should think so, or almost,—I never looked very closely to see.

Q. You have passed that bridge hundreds of times?

A. Yes, sir,—I have passed a number of bridges.

Q. It is your duty as an engineer to know about your bridges, is it not?

A. Not to know the height of the bridges.

Q. To know the condition of them, etc.?

A. Yes.

Q. You don't know whom this conversation was between? A. No, I do not.

Q. You don't think it was between a couple of the section-men? [126—73]

A. I don't think that it was. I couldn't say who it was between.

Q. Then you went over this bridge, about what time did you say, toward Teikhell?

A. Well, probably ten o'clock or a little later, we left there.

(Testimony of Henry Lee.)

Q. Ten o'clock at night?

A. It was later than that, I should judge.

Q. You got back to Teikhell about 5 o'clock in the morning, didn't you?

A. My time shows that we tied up at 9 o'clock in the morning. I don't know what time we got there.

Q. What do you mean by your tying up?

A. That was the time we quit work.

Q. You got in there a little after 5?

A. It must have been 5 o'clock, probably. I couldn't swear to what time it was.

Q. After you got in there, what work did you have to do then?

A. I had to help turn the train around and turn the rotary around but I don't remember what work we did do at that time.

Q. You say you had to help turn the train around?

A. Get around the loop.

Q. In what way did you help to turn the train around? A. Shoved it around the loop.

Q. Shoved the rotary around the loop?

A. Yes, sir.

Q. She wasn't coupled on to the train? A. No.

Q. Then you took the rotary around the loop?

A. What I call a train—a rotary is a train as far as that is concerned—that is the reason I called it a train.

Q. I want to distinguish between that and the local train—[127—74] A. Yes, sir.

Q. Then you took your train or your rotary around the loop? A. Yes.

(Testimony of Henry Lee.)

Q. And how long do you think it took you to go around the loop?

A. I don't know for certain whether we took it around the loop at that time or not. I should judge we did.

Q. If you didn't take it around the loop, what else did you have to do there?

A. I don't remember what we did that trip. Sometimes it takes a couple of hours thawing the ice and snow off my engine when I get through, on hard trips. I might have had to do that after I got through. I don't remember whether I did or not on this particular trip.

Q. You generally take care of your time on those trips? A. Yes, sir.

Q. And you put in your time? A. Yes, sir.

Q. I will ask you if you will refer to the memorandum you referred to a while ago and ask you if that gives you information as to what time you got there?

A. No, it does not.

Q. I will ask you if it gives you information as to what work you did there? A. No, sir.

Q. Then, as a matter of fact, you don't know whether you did any work there? A. No, I don't.

Q. If it shows that you reported as having arrived there at 5:45 in the morning, would you say that that was correct?

A. No, I couldn't say that that was correct, because I don't [128—75] remember it.

Q. You couldn't say that it was wrong either?

A. No, I couldn't say it was wrong.

(Testimony of Henry Lee.)

Q. You don't know? A. No.

Q. But you counted your time until 9 o'clock?

A. Yes, sir.

Q. From 9 o'clock on—what time did you leave there?

A. We were called for one o'clock, one in the afternoon—we didn't leave until later. I don't remember how much later.

Q. Your time shows that you were paid from one o'clock, does it?

A. Yes, sir—we were on duty at that time.

Q. What, if any, work would it be necessary for you to do before leaving there?

A. Well, the only work I would have to do would be to oil my engine around—it would take fifteen or twenty minutes perhaps.

Q. Who looked after your engine and kept your steam up while you were there?

A. The watchman.

Q. As a matter of fact, you didn't leave there until 4 o'clock, did you?

A. I heard Mr. Larson make that statement but I couldn't say what time we did leave there.

Q. The only work you had to do from the time you arrived there at 4 o'clock in the morning until four that evening was to oil your engine, so far as you know and cut some ice off your engine?

Mr. COBB.—We object to that—they didn't arrive at 4; they arrived at 5:45. [129—76]

Q. Then from 5:45 until 4:15, when you left there, you had nothing to do except to oil your engine, which took you from 15 to 20 minutes, and possibly get

(Testimony of Henry Lee.)

some ice off your engine? And you don't know whether you did that or not?

A. I don't know that morning, no—sometimes it takes me two hours or two hours and a half to get the ice off.

Q. Where was your fireman during this time?

A. I don't remember whether he was on the engine all the time or not.

Q. You don't know where he was?

A. I don't remember whether he was on the engine all the time or not.

Q. Was he on the engine any of the time?

A. Yes, sir, he was on the engine part of the time.

Q. What was he doing on the engine?

A. Well, I don't know just what he was doing—only firing the engine, keeping the engine alive.

Q. I thought you had a watchman there for that purpose.

A. There is a watchman generally to take care of the engines after we get off duty. When we were not off duty our fireman is supposed to be there, and as long as he is on duty the watchman don't have to be around.

Q. Were you still coupled to the rotary?

A. As far as I remember, yes.

Q. Do you say you were or were not?

A. I wouldn't say because I am not certain—they may have uncoupled for some reason or other.

Q. Was there another engine coupled to you?

A. Yes, sir.

Q. Where was Mr. Barrett and his fireman on the

(Testimony of Henry Lee.)

engine that [130—77] was coupled to you?

A. I don't know where he was. I suppose he was on his engine.

Q. Did you see him? A. No.

Q. Did you see his fireman? A. No.

Q. You don't know where they were?

A. I don't remember seeing them.

Q. I will ask you if you saw Mr. Holden?

A. I don't remember whether I did or not.

Q. Did you see Mr. Reed? A. I couldn't say.

Q. Did you see Albright?

A. I couldn't say whether I did or not.

Q. Did you see Mr. Wilson?

A. I couldn't say whether I saw him or not. I may have seen him.

Q. Wilson was conductor of your train, your crew?

A. Yes, sir.

Q. And who was your brakeman?

A. I think George Scott was our brakeman.

Q. Did you see him?

A. I don't remember whether I did see him or not.

I have forgotten that.

Q. Were you back in the caboose while you were there? A. Yes, sir.

Q. What time did you go back to the caboose?

A. I don't remember that. I don't remember what time I arrived at the caboose.

Q. Where did you sleep that day?

A. In the caboose. [131—78]

Q. Who was sleeping in there with you?

A. All the crew are supposed to sleep in there.

(Testimony of Henry Lee.)

Q. How is that?

A. All our crew is supposed to sleep in the caboose.

Q. Who slept next to you?

A. That I don't remember.

Q. Do you know who slept in the end of the caboose, below you? A. No, I do not.

Q. Do you know if there was anyone in there sleeping?

A. Yes, there was somebody in there, I know, but who it was, I don't know.

Q. Don't you know that Reed was in there sleeping? A. No, I do not.

Q. Don't you know that Scott was in there sleeping?

A. No, I am not positive about that, but he must have been in there, because we tied up there for a while, and they must all have been in there sleeping, but I don't remember.

Q. They must all have been in there sleeping then?

A. Part of the time—they must all have had a nap there.

Q. But you don't know?

A. I don't remember the circumstance at that time, at that particular time.

Q. But you are positive you heard a conversation about cleaning the fires, are you? A. Yes, sir.

Q. You know that is a fact, don't you?

A. Yes, I do.

Q. Now, then, you returned and came down as far as Bridge 75A? A. Yes, sir. [132—79]

Q. And what is the first you knew of this accident?

(Testimony of Henry Lee.)

A. The first I knew of the accident I saw the head-end of the rotary give a lurch like it had gone off the track.

Q. You saw it give a lurch?

A. Yes, sir; a lurch to the right, and I thought it was off the track.

Q. Were you standing at your post at the time you saw it go?

A. I was not standing. I was sitting on my seat-box, with my head out of the window.

Q. What were you doing with your head out of the window? A. Looking out, watching ahead.

Q. That is one of your duties, is it? A. Yes, sir.

Q. As an engineer,—to be constantly on watch?

A. Yes, sir.

Q. Were you on a straight piece of track just before you got to the bridge? A. Yes, sir.

Q. Now, then, on what side of the rotary would Mr. Reed be on, in coming back to the bridge toward Cordova,—the same side you were on?

A. Yes, sir.

Q. Was it a dark night? A. No, sir.

Q. Light?

A. It wasn't so very light, but it wasn't real dark.

Q. It wasn't a dark night? A. No.

Q. Was it snowing?

A. Yes, it was snowing some. [133—80]

Q. Very much?

A. No, I don't think it was very heavy.

Q. About how much snow did you have on the track coming down?

(Testimony of Henry Lee.)

A. I don't think we had very much snow along there.

Q. Was your rotary working? A. Yes, sir.

Q. Which side was she throwing the snow?

A. She was throwing snow to the left.

Q. You had just gone up there a short time before—had it been snowing from the time you left?

A. I don't know whether it had been snowing all the time or not.

Q. There was a very light snow on the track?

A. There was a light snow.

Q. How far is it from your engine, from where you were sitting on your engine, to the end of the rotary, the head-end of the rotary?

A. 60 or 80 ft., I suppose.

Q. Could you see that far?

A. Yes I could see the rotary,—I could see the hood.

Q. How much further could you see ahead?

A. I could not see ahead very much further on account of the snow flying out on my side.

Q. I understood they were throwing the snow to the left? A. Yes, sir; they were.

Q. On the opposite side?

A. Lots of loose snow will fly from the wheel out to the right. No matter which way it throws it, some will fly the other way.

Q. And it is difficult for you to see?

A. Yes, sir. [134—81]

Q. Was it snowing at the time?

A. I think it was.

(Testimony of Henry Lee.)

Q. A heavy snow?

A. No, I don't think it was a heavy snow, if I remember right.

Q. Your eyesight is good, is it not? A. Yes, sir.

Q. About how far would you say you could see ahead of the rotary?

A. Well, I don't know that I could see ahead of the rotary at all when the snow was flying up there, unless there was just an opening, just a flash once in a while.

Q. Now, then, the rotary fell to the right,—it was derailed and fell over into the creek?

A. Yes, sir.

Q. What did you do when you saw that?

A. As soon as it tipped over, I jumped off of my engine and started down to the rotary and then I turned before I got there, turned and went back and got a light and started down the second time, went down there.

Q. Who went with you?

A. By that time I think Mr. Wilson had got there or some of the men there beat me to the rotary and we started in to get Herman Albright out.

Q. And you first got Albright out, and then Holden?

A. No, I didn't get him out. There was quite a number got around him and was digging him out, digging the coal from around him, and I left him and went over just in time to see them getting Holden out. They had taken an ax and broke into the side of the rotary and were helping Holden out.

(Testimony of Henry Lee.)

Q. You helped do this work, did you? [135—82]

A. I helped with Herman a while, helped dig the coal away from him, but after they got so many around there, I went to look around to see where the other boys were.

Q. What other boys? A. Holden and Reed.

Q. Did you find Holden?

A. Yes, they were just taking him out of the window when I got over there.

Q. And that left Mr. Reed, the engineer?

A. Yes, sir.

Q. Did you make an effort to get him out?

A. Why, we felt around for him, tried to find him.

Q. Who do you mean by we?

A. The boys that were there. Wilson was one of the men that was there, and I remember distinctly Jack Terry and I. One of the firemen was in there, crawled alongside of the cab, inside the cab on the side of the boiler and was hunting for Mr. Reed.

Q. Did you get him out? A. No, sir.

Q. Why didn't you get him out?

A. He was fast under the boiler; we couldn't get him out,—as far as we could tell, he was fast. We couldn't tell whether he was under the boiler or not. Terry got hold of his hand, or claimed he did—I didn't take hold of him. He said, "I have got hold of his hand." He reached down in the water the length of his arm and said he had hold of his hand.

Q. And did you do everything you could to get him out? A. Yes, sir, as far as we could.

(Testimony of Henry Lee.)

Q. You put forth all the efforts you could think of and do?

A. Well, Mr. Wilson and Mr. Larson and the rest of them went back [136—83] to the caboose and consulted what to do.

Q. Were you with them?

A. I was in the caboose part of the time, yes, and I heard part of the conversation.

Q. Did you do everything you could do to relieve him?

Mr. COBB.—I don't want to object to having all the facts brought out, but it seems to me that this is a useless waste of time. The jury knows, and everybody knows, that these boys did everything they could to get this man out—I think it is a fact nobody disputes—and I object to it as a useless consumption of time.

By the COURT.—Let him answer the question.

A. Yes, we done all we could think of.

Q. But you couldn't get him out?

A. No, sir.

Q. Now, then, what time did you leave there?

A. We were probably there an hour, maybe more.

Q. About an hour, and maybe more? A. Yes.

Q. Did you take part in this consultation?

A. No, sir.

Q. You were one of the engineers there, were you?

A. Yes, sir.

Q. Had charge of an engine? A. Yes, sir.

Q. As part of the crew attached to that rotary?

A. Yes.

(Testimony of Henry Lee.)

Q. Did you hear the conversation?

A. I heard part of the conversation, as to what they should do.

Q. Do you know what was the conclusion of that conversation? [137—84]

A. Yes, they concluded that it was best to go back to Chitina if they could get there.

Q. For what purpose?

A. So as to get the passengers back to Chitina, in case they ran short of provisions or anything. They were not very well provided at 78 with provisions, and it was a small crew there, and it was a poor place to keep the passengers.

Q. Then this consultation was for the purpose of deciding on where you could get something to eat?

A. No, and also coal and water for the engine,—get where we could get coal and water for the engine.

Q. Don't you know that that consultation was for the purpose of seeing what they could do to get Mr. Reed released from his engine—wasn't that the main thing?

A. Well, that was decided also. After they decided about that, they concluded they couldn't do anything about getting the body out, and they went back to Chitina.

Q. For jacks and such other equipment as they might use in handling that rotary?

A. What I heard, the main part was getting the engine back and the passengers back—that was the part of the conversation I heard.

Q. But you didn't hear all the conversation?

(Testimony of Henry Lee.)

A. I didn't hear all the conversation; no.

Q. You were not one of that crew and not interested in what was going on?

A. I was interested, but I was down around my engine—part of my engine was off the track, and I was getting my engine on part of the time.

Q. You were interested in your engine?

A. Yes, sir. I might answer that question more fully, too, to [138—85] come to think about it. There was two boys hurt there that they were in a hurry to get back to the doctor.

Q. That is Holden and Albright?

A. Yes, Holden and Albright—they were in a hurry to get them back to the doctor.

Q. Then it wasn't so much to get back in order to get something to eat?

A. No, that was not the main thing, the main point.

Q. Now, then, you say you knew Mr. Reed for about two years? A. As near as I recollect, yes.

Q. He had been working here for the company for about two years?

A. Something like that; if I remember right.

Q. There is where you first met him?

A. I met him here on the Copper River.

Q. Had you ever worked with him on the rotary?

A. Not only pushing the rotary—he was running the rotary, and I was pushing the rotary.

Q. About how often had you worked with him on the rotary?

A. Why, I had only worked a short time with him on the rotary; he had been outside and came back and

(Testimony of Henry Lee.)

had only been working a short time, if I remember right.

Q. Well, he was here for about two years, wasn't he? A. Yes.

Q. You knew him during that time, didn't you?

A. I knew him, yes; met him and was acquainted with him.

Q. What was he doing during that time?

A. Runing an engine, different places and times.

Q. Running the rotary?

A. Running a locomotive and running a rotary at the time of the accident, and a while before. [139—86]

Q. He was a competent engineer?

A. Yes, sir, considered so.

Q. Familiar with the road? A. Yes, sir.

Q. A careful man?

A. As far as I know, yes.

Q. Industrious, wasn't he? A. Yes, sir.

Q. And one of our most capable engineers, wasn't he? A. Considered so.

Q. Had you ever been pusher for him before?

A. Yes, sir, I had.

Q. About how often?

A. I don't know. I don't remember how often. I had pushed the rotary before on former trips for him.

Q. In that particular winter, do you recall about when the rotary began running? A. No, I do not.

Q. Some time in November, wasn't it?

A. I think so.

Q. About the 15th of November, wasn't it?

(Testimony of Henry Lee.)

A. I couldn't say what date it was.

Q. But some time during the month of November?

A. I think it was.

Q. You were running out as pusher behind that rotary on each of its trips, were you?

A. Well, all but two or three trips, I think, that winter I pushed the rotary—I lost a couple or three trips, I think.

Q. Reed had been on it every trip, had he?

A. No, sir; Nettleton was on for a while, Price Nettleton.

Q. Between Nettleton and Reed—those were the only two that [140—87] were operating the rotary?

A. One trip, I remember one trip that John Filingier was running the rotary.

Q. One trip you recall he ran it and how many trips did Nettleton run it?

A. He was on a couple of trips I remember of,—I don't remember how many more.

Q. Reed ran it the rest of the trips, did he?

A. Yes, he was supposed to be the regular man on the rotary. He was an older man than Nettleton and relieved him when he came back from Seattle.

Q. He was a careful, competent man?

A. As far as I know.

Q. Hadn't you ever seen him clean his ash-pan along the line? A. No, sir, I had not.

Q. You had been pusher behind him each time, had you not? A. Yes, sir.

Q. Did you ever see him clean his ash-pan at 55?

(Testimony of Henry Lee.)

A. Not he—I have seen the fireman clean it there, but not Reed; that was the fireman's duty.

Q. Did you ever see him permit his pan to be cleaned on the bridge before?

A. Not as I remember.

Q. Now, at the time of this accident, how many rotaries did the company have?

A. They owned two rotaries.

Q. What did you call those two rotaries?

A. We called them the little rotary and the big rotary; the proper names were X1 and X2.

Q. X1 is the little rotary? [141—88]

A. The small rotary—and X2 is the large one.

Q. Now, then, it was X2 that you broke at Mile 52, was it not? A. Yes, sir.

Q. And had to bring it back to the shops?

A. Yes, sir.

Q. It was XI that you had with you on this trip, that was derailed? A. Yes, sir.

Q. You went to Chitina with those two engines and the caboose then, did you, after the accident?

A. Yes, sir.

Q. And what did you do after you got to Chitina?

A. Why, I laid over there one day and then I went to work, from there to Kennecott.

Q. You started working then, did you?

A. Yes, sir.

Q. To go to Kennecott?

A. I went to work between there and Kennecott.

Q. What were you doing?

(Testimony of Henry Lee.)

A. Running that local between Chitina and Kennecott.

Q. Who was running the local at the time you went to Chitina?

A. The north end local up there you mean?

Q. Yes.

A. Why, Fatty Reed was the engineer, Johnny Reed. Parkins was running the train, though.

Q. You didn't come back, down to the place where this accident happened?

A. No, sir; not until the road was opened and the bridge was rebuilt.

Q. That night of the accident, which way was the wind blowing? [142—89]

A. It was blowing from the left side of the train. If you can tell me just what direction that track is I can tell you the direction; it was blowing toward the glacier.

Q. Describe it—give us the direction by stating it as to the train coming down toward Cordova?

A. The way I remember it, it was blowing from the left side—it was coming down.

Q. That would be blowing across—

A. Toward the glacier there—there is a glacier there.

Q. Was there much of a wind?

A. No, I don't remember that there was a very heavy wind.

By the COURT.—Which way is the glacier going out?

(Testimony of Henry Lee.)

Mr. BORYER.—The glacier is on the left side going out.

Q. And you say that the fire was on the right-hand side of the track coming down toward Cordova?

A. Well, that is where it had burned; the ties and stringers were burned there; that is where the fire had been.

Q. Was that about the location where the rotary was standing while she was taking water?

A. Yes, about the location.

Q. You knew where the rotary was standing, did you, that night.

A. Somewhere near where it was standing.

Q. And you think that this fire was somewhere near where the rotary was standing?

A. Yes, sir.

Q. From what you saw of the position of the rotary and the fire and the condition of the stringers and ties would you say that that fire was caused from the fire of the rotary, in your best judgment.

A. No, I would not say so. I don't know whether it was caused from that or not. I couldn't say that caught from the cinders. [143—90]

Q. You couldn't say? A. No.

Q. You are certain it was not caused from your engine? A. I am not certain of it.

Q. You didn't clean your fire there?

A. Our fire was not cleaned there.

Mr. BORYER.—That is all.

(Testimony of Henry Lee.)

Redirect Examination.

(By Mr. COBB.)

Q. As a matter of fact, from your experience as an engineer on the railroad, it is not an uncommon thing for bridges to be set afire by the locomotive passing over them, when no fires are cleaned?

A. No, it is not an uncommon thing.

Q. What do they do to guard against that?

A. They generally have bridge sprinklers on their engine.

Q. Were there any bridge sprinklers on these?

A. No, sir.

Q. Do railroads that you have been accustomed to usually resort to any other method to see that the track is in order before a train is sent out?

Mr. BORYER.—We object to that as incompetent, irrelevant and immaterial, and does not tend to prove anything under the issues as raised in the pleadings.

Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. What is done to safeguard the track besides the sprinklers?

A. Why, they have track-walkers.

By the COURT.—I want it confined to the burning of the ties, the issues in your complaint. The negligence will have to [144—91] be confined to the issues you have raised in your complaint.

Mr. BORYER.—I move the answer be stricken.

By the COURT.—The motion is granted as not exactly responsive to the question and the jury is in-

(Testimony of Henry Lee.)

structed to disregard the statement.

Q. I will ask you if you know whether or not track-walkers are used for the purpose of safeguarding the track and if that is customary on railroads.

Mr. BORYER.—We object as incompetent, irrelevant and immaterial and does not tend to prove any facts in issue in this case.

By the COURT.—The objection will be sustained. It does not comply with what I have already ruled.

Mr. COBB.—Does the Court hold that under this pleading I cannot show that it was negligence in not having a track-walker?

By the COURT.—Unless it is in reference to or has to do with the burning of the ties and the bridge.

Plaintiff allowed an exception to the ruling of the Court.

Q. Coming back to the beginning of this trip—were you on the trip on which this train left here on the 28th of December, 1911?

Mr. BORYER.—We object to that as incompetent and irrelevant and tends to prove nothing under the issues and simply burdens the record.

By the COURT.—It has already been testified to. Unless it is something different than he has already testified to, the objection will be sustained. I let you go back to the 25th.

Mr. COBB.—This is preliminary and I think it is something new.

Q. Were you out on the trip of the 28th? [145—92]

Mr. BORYER.—We object to that for the reason

(Testimony of Henry Lee.)

that it is incompetent, irrelevant and immaterial and tends to prove nothing under the issues.

Objection overruled. Defendant allowed an exception.

A. Yes, I left Cordova on the 28th.

Q. How long were you out on that trip?

A. The time shows 24 hours between Cordova and Mile 39.

Q. Now, wasn't that the trip—I am not sure but I want to get at it—that the rotary was broken?

A. No, this was another rotary that was broken.

Q. Was there a rotary broken on that trip?

A. There was a rotary broken on this trip also.

Q. On the trip of the 28th? A. I think so; yes.

Q. Where did the little rotary come from that was sent up to relieve the one that was broken at Mile 39 or 52 on the trip of the 30th?

A. The little rotary came from Cordova.

Q. It was sent out from Cordova.

A. Yes, sir.

Q. When you reached Teikhell, how many hours had you been continuously on duty up to the time that you went off duty—how many continuous hours on that trip going up?

Mr. BORYER.—We object to that as incompetent and irrelevant and tends to prove nothing under the issues.

Objection overruled. Defendant allowed an exception.

A. 45 hours and 15 minutes my time shows.

Q. Now, Mr. Boryer asked you what you were do-

(Testimony of Henry Lee.)

ing there from 5:45, when the train got in there, up to the time you went off duty. I will ask you if you went off duty at the first [146—93] opportunity—as soon as you could. A. Yes, sir.

Q. State to the jury whether or not you went back on duty before you were ordered. A. No, sir.

Q. Mr. Boryer asked you on his cross-examination if you could see out ahead of that train coming back, as you approached this bridge, from your engine. I will ask you if there is any headlights to throw light ahead where the rotary is working? A. No, sir.

Q. No headlight at all? A. No.

Q. Can the engineer of the rotary see ahead at all—is the rotary built so he can see ahead?

Mr. BORYER.—We object to the question as incompetent, irrelevant and immaterial.

By the COURT.—I think it has been answered three or four times by this witness. I will sustain the objection for that reason.

Q. Can you recall whether you stated that or not—whether you could see ahead or not?

By the COURT.—You need not answer the question.

Q. What is the pilot for? A. To watch ahead.

Q. Do you have one on a locomotive?

A. No, sir.

Q. Only on a rotary? A. Yes, sir.

Mr. COBB.—That is all. [147—94]

(By Mr. BORYER.)

Q. I believe you testified that you were on duty, how many hours, the day before this accident—I

(Testimony of Henry Lee.)

mean before you started.

A. My slip shows 45 hours and 15 minutes.

Q. That you were on constant duty?

A. Yes, sir.

Q. Did you raise any objection to going, to taking that trip out that morning?

Mr. COBB.—We object to that as irrelevant and immaterial.

Objection sustained. Defendant allowed an exception.

Q. I will ask you if you ever objected to working the number of hours that you did work for the company.

Mr. COBB.—We object as irrelevant and immaterial.

Objection sustained. Defendant allowed an exception.

Q. I will ask you if on the particular trip that you took, leaving here on the 30th, if you did not work the number of hours that you did because you had met with an accident to your rotary?

A. Yes, that prolonged the trip, made it longer; yes, sir.

Q. That is the reason that you worked over 16 hours at a time?

A. That was one of the reasons, yes.

Q. What was the other reason, if any?

A. Heavy snows.

Q. Would it have been dangerous to the train and the passengers and the mail if you had stopped?

(Testimony of Henry Lee.)

A. It would have been dangerous in some places, in deep cuts.

Q. You would be liable to be snowed in?

A. Providing there was a high wind and the snow would drift in very quick, but there was lots of places where we could stop. [148—95]

Q. And if you happened to be drifted in, you would be liable to be held anywhere from three weeks to two months?

A. I don't know whether it would be that long or not.

Q. You have been held for three weeks, have you not? A. Not me.

Q. Along the road—the rotary has, has it not?

A. Yes, the rotary has. I was never on one of those trips.

Q. Don't you know that the rotary was held three weeks at about Mile 33 because they happened to separate their train for a short time there?

Mr. COBB.—We object to that. Objection overruled.

A. I have heard of the trip.

Mr. COBB.—We object to that answer and move it be stricken.

By the COURT.—It may stand, for the reason that it might have some weight on how they managed the trip at that particular time.

Mr. COBB.—Very well.

Q. After you left the terminal at Cordova on the afternoon of the 30th, your next terminal was Teikhell, was it not? A. Yes, sir.

(Testimony of Henry Lee.)

Q. I will ask you if you do not know that this road was not accepted and taken charge of by the Interstate Commerce Commission until September 1, 1912?

Mr. COBB.—We object to that—that is a question of law.

By the COURT.—He may answer if he knows.

A. I don't know.

Q. Did you ever receive a bulletin advising you when this road was placed in the hands of the Interstate Commerce Commission?

Mr. COBB.—We object as irrelevant and immaterial.

Objection sustained. Defendant allowed an exception. [149—96]

Q. I will ask you if you consider that the law, the service hour law, applied to you before September 1, 1912?

Mr. COBB.—We object as irrelevant and immaterial.

Objection *sustain*. Defendant allowed an exception.

Q. I will ask you if you have ever worked over the required time as provided by law, and the service hour law, since September 1, 1912.

Mr. COBB.—Same objection.

Objection sustained. Defendant allowed an exception.

Mr. BORYER.—That is all.

(By Mr. COBB.)

Q. Can you state to the jury how much you were

(Testimony of Henry Lee.)

delayed on this trip by the broken rotary?

A. No, I could not.

Q. Can you refer to your slips there and tell?

A. No, it does not show the delays. We are not required to show delays on our slips and we don't keep them.

Q. Now, how long did it take you—about what time was it—you left here at 11:45—before you got up to where the rotary was broken?

A. I don't remember that either. I don't remember what time it was.

Q. Can you give the jury some idea?

A. It was some time in the evening.

Q. Mr. Boryer said it was about 6 o'clock—?

A. I don't remember the time.

Q. About 6 o'clock that you got to this place where it was broken; where was it broken?

A. At Mile 52.

Q. Can you tell whether you were delayed twenty hours or not [150—97] by this broken rotary?

A. No, I don't think so.

(By Mr. BORYER.)

Q. Do you know?

A. No, I don't know for certain.

Q. Then you don't know? A. No, sir.

Q. While you were out on this trip you kept charge of your time?

By the COURT.—He has already answered that.

Question withdrawn.

Mr. BORYER.—That is all.

Witness excused. [151—98]

[**Testimony of Kenneth E. Holden, for Plaintiff.**]

KENNETH E. HOLDEN, a witness called and sworn in behalf of the plaintiff, testified as follows:

. Direct Examination.

(By Mr. COBB.)

Q. What is your name?

A. Kenneth E. Holden.

Q. Where do you live? A. Cordova.

Q. How long have you resided here?

A. Four years.

Q. What is your occupation?

A. Braking on the Copper River & Northwestern Railway.

Q. How long have you been in the employ of the Copper River & Northwestern Railway Co.?

A. Four years.

Q. You were in the employ of the company then during the months of December, 1911 and January, 1912? A. I was.

Q. You were in the employ of the company the whole month of December? A. Yes, sir.

Q. Did you make trips out over the road?

A. Yes, sir.

Q. About how long would it take you during that month to make the run to Teikhell?

Mr. BORYER.—We object as incompetent, irrelevant and immaterial and tends to prove nothing under the issues in this case.

Objection overruled. Defendant allowed an exception.

A. All the way from seven to twenty-four hours.

(Testimony of Kenneth E. Holden.)

Q. Were you on the trip, on the train that left here on the [152—99] 30th of December, 1911?

A. I was.

Q. What were you doing?

A. Pilot on the rotary.

Q. How long had you been pilot on the rotary?

A. That was the first trip, at that time.

Q. You are familiar with the method of construction of the house on the rotary,—the way it is put in?

A. Yes, sir.

Q. I wish you would explain to the jury—first, what do the crew of the rotary consist of?

A. Three men.

Q. Who are they?

A. Pilot, fireman and engineer.

Q. Where does the pilot stay?

A. At the head end of the rotary.

Q. I wish you to tell the jury what sort of a place he stays in and what his duties are, briefly.

A. Well, the rotary is, you might say, boxed in like a little house, with an engine inside. The pilot has a place up in the head-end and the engineer has a place in the middle of the rotary and the fireman is in the rear of the rotary. The engineer takes signals from the pilot.

Q. Why is it necessary for the pilot to signal the engineer? A. Because the engineer can't see.

Q. You mean he cannot see ahead at all there from where he is? A. No, sir.

Q. Is there any division between his compartment and that of the pilot? A. Yes, sir.

(Testimony of Kenneth E. Holden.)

Q. What does that division consist of? [153—100]

A. You mean how far it is from the pilot to the engineer?

A. No, what sort of a division is it?

A. I don't understand you.

Q. Is there a partition or what is it?

A. There is a little alleyway running from the pilot back to the engineer.

Q. A door in it? A. Yes, sir.

Q. And how is it between the place where the engineer stands and where the fireman is?

A. The same way.

Q. A door between the two? A. Yes, sir.

Q. Now, do you recall about what time you left here?

A. It was before noon on the 30th of December.

Q. Do you know where Bridge 75A is?

A. Yes, sir.

Q. The trestle there? A. Yes, sir.

Q. Do you recall about what time you got to that place? A. No, sir.

Q. You don't recall that? A. No, sir.

Q. What time did you get to Teikhell?

A. In the morning some time?

Q. The morning of what day? A. January first.

Q. Did you have an accident going up of any kind?

A. I don't think we did, no, sir.

Q. Did you go through with the same rotary?
[154—101] A. Yes, sir.

Q. Was there any accident to the rotary on the trip before that? A. Yes, sir.

(Testimony of Kenneth E. Holden.)

Q. What trip was that?

A. The trip just before we went out on this other trip.

Q. What accident was that?

A. The accident we had at Mile 52.

Q. Now, I want you to describe what that was?

A. The cylinder-head blew out.

Q. There was no such accident as that on this particular trip?

A. I don't think there was; no, sir.

Q. You took the same rotary clear through?

A. Yes, sir.

Q. Now, at the time you reached Teikhell had you been continuously on duty from the time you left Cordova? A. Yes, sir.

Q. You got there in the morning of the first. Do you know what time you went off duty?

A. No, sir.

Q. Could you give the jury any idea how long you were in there before you got through your work?

A. I had a sleep. I don't know how long I slept, but I was up about one o'clock. I guess I got up about one o'clock P. M.

Q. You were ordered on duty at that time?

A. I don't remember whether I was or not; no, sir.

Q. If you were not ordered on duty, what did you get up for?

A. I might have been ordered on duty at that time, but I don't remember.

Q. Now, coming back on the return trip, did you act as pilot? [155—102] A. Yes, sir.

(Testimony of Kenneth E. Holden.)

Q. About what time, as near as you can recall, was it, that you approached this bridge?

A. Some time after 7 o'clock.

Q. In the evening? A. In the evening.

Q. The first day of January? A. Yes, sir.

Q. Did anything happen there? A. Yes, sir.

Q. Tell the jury what it was happened.

A. Well, the rotary went through the bridge, was all I knew at the time.

Q. How did it go through the bridge?

A. I couldn't tell you at the time how it went through.

Q. Did it go straight down through?

A. No, sir, it went off on the side.

Q. Which side? A. On the right side.

Q. Just rolled off and turned over? A. Yes, sir.

Q. Where were you? A. In the pilot-house.

Q. Did you go down with it? A. Yes, sir.

Q. Then what happened to you—anything?

A. I scrambled around there trying to get out and couldn't get out, and finally I had assistance from George Scott, a brakeman on the rotary, and as I was trying to get out—he couldn't pull me out of there—I told him to go back to the [156—103] coach and get an ax, and while he was going back Mr. Flynn, who was the roadmaster at the time, held me up until Scott got the ax, and they chopped the window and pulled me out and after that I didn't know any more.

Q. You don't remember anything after that?

A. I don't remember anything after that; no, sir.

Q. As you approached this bridge were you watch-

(Testimony of Kenneth E. Holden.)

ing out the best you could? A. Yes, sir.

Q. Did you see anything to indicate danger?

A. No, sir.

Q. Could you see ahead? A. Yes, sir.

Q. Well? A. Not very, no, sir.

Q. Why?

A. Because it was snowing and the wind was blowing and it was a light snow and we were going fairly fast and it was throwing the snow. The snow was going to the left and the snow was flying from the wheel to the right of the hood so that you couldn't see ahead of it.

Q. It was a light snow?

A. It was a light snow.

Q. And the wheel was throwing it in all directions?

A. Yes, sir.

Q. Do you know how you were standing when the accident happened?

A. Right in front of the window.

Q. Do you know how many hours rest you had at Teikhell? A. No, sir.

Q. You have no idea? [157—104]

A. No, sir.

Q. But you do know you were called at one o'clock?

A. I know I got up at one o'clock. I don't know whether I was called or not,—I don't remember.

Mr. COBB.—That will be all.

Cross-examination.

(By Mr. BORYER.)

Q. Do you recall going out on the line on the 29th? Were you on the rotary that went out on the line on the 29th?

(Testimony of Kenneth E. Holden.)

A. I think I was on the local on the 29th.

Q. How far out did you go? A. Miles Glacier.

Q. Did you stop there? A. Yes, sir.

Q. What rotary did you have?

A. Well, I was not on the rotary.

Q. What rotary was preceding you?

A. I think it was the X2.

Q. Then you got out as far as the Glacier and you say something happened to you there,—to the rotary?

A. I think something happened to the rotary. I don't quite remember, but I was braking on the local and they put me off on the rotary and turned me back to Cordova—back on the rotary to Cordova.

Q. Do you recall what rotary that was?

A. No, sir.

Q. Do you recall whether it was the large rotary or the small rotary?

A. The large rotary, I think it was.

Q. The large rotary? A. I think so. [158—105]

Q. I don't want to get these rotaries confused. Can you say whether it was the large or small rotary?

A. No, I couldn't, really.

Q. You then don't know whether it was the large rotary or the small rotary? A. No.

Q. But whatever rotary it was, you came back on that rotary? A. Yes, sir.

Q. What time did you leave here that day?

A. On the local?

Q. Yes; this was on the 29th now?

A. Eight o'clock, I think, in the morning.

(Testimony of Kenneth E. Holden.)

Q. What time did you get to Miles Glacier?

A. Well, it was dark. I don't remember what time it was.

Q. That was in what month? A. December.

Q. What time does it usually get dark in December? A. I don't know.

Q. Doesn't it usually get dark about three or four o'clock in December? A. I think so; yes.

Q. And earlier than that? A. Sometimes.

Q. Now, then, what became of your local train when your rotary broke at Miles Glacier on the 29th?

A. I think it went on to Chitina.

Q. Without the rotary? A. No, sir.

Q. What rotary went on to Chitina with it?

A. I don't know what rotary. It was the rotary that came from Cordova. [159—106]

Q. At that time the company only had—how many rotaries? A. Two rotaries.

Q. Aren't you a little confused as to the rotaries and the train? If you will just think a moment you will find now that you are going to carry this rotary and train up to Chitina, and then the train that left here that the accident happened on left on the 30th?

A. Yes, sir.

Q. You understand that? A. Yes, sir.

Q. That the train the accident happened on left here on the 30th? A. Yes.

Q. Now, then, I will go back with you. You say that you broke the rotary that you started out with, with the local, on the 29th?

A. I think that was it. There was a difficulty in

(Testimony of Kenneth E. Holden.)

there some way or other with two trips. This rotary broke. I wasn't piloting on the rotary at all. I was just braking on the rotary.

Q. You came back with the rotary to the shop?

A. Yes, sir.

Q. And you arrived there about what time?

A. I don't remember what time that was.

Q. Was it late in the evening?

A. It was in the morning, I think, sometime.

Q. You pulled in over night with the rotary?

A. Yes, sir.

Q. Why were you bringing this rotary back?

A. Because it was broken.

Q. Why didn't you fix it there? [160—107]

A. I don't think it could be fixed there.

Q. Where are the shops of the Railroad Company located? A. In Cordova.

Q. Do they have any other shops along the line?

A. No, sir.

Q. Was it then, necessary, to bring the rotary back to Cordova? A. Yes, sir.

Q. To be repaired? A. Yes, sir.

Q. And you did bring it back to Cordova to be repaired? A. Yes, sir.

Q. Do you recall what was broken about the rotary? A. No, sir.

Q. You turned it over to the shops when you arrived here? A. Yes, sir.

Q. That was some time during the early morning of the 30th—is that correct?

A. I think it was—I am not positive of that.

(Testimony of Kenneth E. Holden.)

Q. You left on the 29th, and you came back on the 30th? A. On the 30th, yes, sir.

Q. That would be the morning of the 30th?

A. Yes, sir.

Q. Where was the other rotary then?

A. The little rotary? In Cordova.

Q. That is right?

A. That is right, yes.

Q. Now, let us start over. On the morning of the 29th you left here, then, on the local for Chitina, did you? A. Yes, sir.

Q. And you had with you what rotary?

A. I think the X2 was with us then. [161—108]

Q. That is the large rotary? A. Yes, sir.

Q. And when you got to Miles Glacier, what happened to the rotary?

A. The rotary, I think, was broken, got broken somehow or other.

Q. Was that on the 29th or on the 30th?

A. It must have been on the 29th.

Q. Wasn't it on the 30th?

A. I don't remember whether it was on the 30th or not.

Q. I will ask you this: Did you go out on the trip the day before, the trip that was made when this accident happened? A. Yes, sir.

Q. How far out did you go?

A. Miles Glacier was as far as I went.

Q. And then you came back? A. Yes, sir.

Q. And started out with the regular train next day? A. Yes, sir.

(Testimony of Kenneth E. Holden.)

Q. You brought back, then, on the 29th, the rotary that had gotten as far as Miles Glacier and was broken; is that correct? A. Yes, sir.

Q. The train stayed there, did it?

A. I don't think it did; no, sir.

Q. Where was the other rotary when you left town? A. Which one?

Q. The little rotary.

A. I think it was in Cordova.

Q. Did you pass it as you were coming in?

A. No, sir.

Q. Then, when you got back to town, it must have been in town? A. Yes, sir. [162—109]

Q. You arrived here that morning?

A. Some time in the morning; yes, sir.

Q. On the X2—that is the large rotary?

A. Yes, sir.

Q. What did you do after you arrived in town?

A. I went to the hotel.

Q. Then when were you called again?

A. Called for that morning, sometime.

Q. You were called that morning to go out with what? A. The X1.

Q. You went out with the X1, did you?

A. Yes, sir.

Q. Who was on X1 with you?

A. Reed and Albright.

Q. Did they start from town? A. Yes, sir.

Q. What did you have with you besides the rotary?

Q. Two engines and a caboose.

Q. How far did you go that day, on the 30th?

(Testimony of Kenneth E. Holden.)

A. I think we got to 55.

Q. What time did you get to 55? About what time?

A. I think in the morning some time, the forenoon.

Q. You left Cordova about what time on the 30th?

A. About noon.

Q. And about what time did you get to 49, Miles Glacier, that day?

A. I don't remember what time we got there.

Q. Approximately—have you any idea?

A. No, sir.

Q. What time did you get to Mile 55?

A. I think we got there in the morning sometime, probably between [163—110] 7 and 9 o'clock.

Q. Sometime between 7 and 9 o'clock the next morning? A. A. M., yes, sir.

Q. Did you make any stops between here and Mile 49? A. Not as I know of.

Q. Did you make any stops between Mile 49 and 55? A. Not as I know of.

Q. Did you break the rotary before you had gotten to 55 on this trip?

A. I don't think we did; no, sir.

Q. Were you in the courtroom when Mr. Lee was on the stand? A. Some of the time; yes, sir.

Q. Well, then, you got there some time in the morning—you got to 55 some time in the morning of the 31st? A. Yes, sir.

Q. About how many hours were you going from Cordova to Mile 55?

A. From noon on the 30th until 8 or 9 o'clock on the

(Testimony of Kenneth E. Holden.)

31st, I think—the morning of the 31st.

Q. Why were you so long making that trip?

A. We had lots of snow—it takes time to throw snow out.

Q. Did you have the local behind you?

A. I think it was; yes, sir.

Q. Do you know where you were about 6 o'clock.

A. On the 31st?

Q. On the 30th? A. No, sir.

Q. What were the weather conditions?

A. They were not so bad; the wind wasn't blowing.

Q. Why didn't you stop? A. Where?

Q. That night—you left here about—the forenoon of the 30th? [164—111] A. Yes, sir.

Q. Then, when night came on, why didn't you stop?

A. I don't know. They kept on going, and I wasn't in charge of the train. I had to stay up there in my place as long as they went.

Q. You just kept going? A. Yes, sir.

Q. Your next terminal was Teikhell?

A. Yes, sir.

Q. That is at Mile— A. 101.

Q. You were making for Teikhell, were you?

A. Yes, sir.

Q. That is as far as you take the rotary, is it not?

A. Sometimes.

Q. You very seldom take the rotary above Teikhell? A. No, sir.

Q. And then you left 55—where did you eat breakfast?

(Testimony of Kenneth E. Holden.)

A. I don't remember where we ate breakfast.

Q. How long did you stop at 55?

A. I don't remember that.

Q. Did you stop there? A. We did.

Q. Did you take water there? A. I think so.

Q. Did you do any other work there?

A. Not as I know of.

Q. You were on the rotary at the time?

A. Yes, sir.

Q. Did the other engines take water there?

A. I don't know. [165—112]

Q. Then you left 55 and started for Teikhell?

A. Yes, sir.

Q. Do you recall about what time you got to Bridge 75A?

A. Somewhere between 7 and 11 o'clock on the night of the 31st.

Q. Did you pass over that bridge? A. Yes, sir.

Q. Did you return to the bridge?

A. We backed up—I don't know how far we came back.

Q. Did you stop on the bridge?

A. I don't know.

Q. When you started back, where was your first stop?

A. I don't know where they stopped,—what mile we stopped on.

Q. Did you stop? A. Yes, sir.

Q. Did you take any water there?

A. I don't know.

Q. Did you make more than one stop?

(Testimony of Kenneth E. Holden.)

A. I don't remember.

Q. Do you remember if you backed—made one stop and then backed down and got some coal or something? A. No, sir.

Q. You mean you did not or don't recall?

A. I don't recall it.

Q. You don't recall making two stops?

A. No, sir.

Q. If two stops were made, do you recall doing any work at either one of these stops?

A. No, sir; I do not.

Q. What time did you reach the first terminal after leaving Cordova, that is, the Mile 101, or Teikhell?
[166—113] A. What time did we reach there?

Q. Yes.

A. Sometime in the early morning—I don't know what time it was.

Q. After you reached there, what did you do?

A. I went to bed.

Q. And where did you go to bed?

A. In the caboose.

Q. Where did Mr. Reed go to bed?

A. In the same bunk I had in the caboose.

Q. Did you go together? A. Yes, sir.

Q. That is the Engineer Reed? A. Yes, sir.

Q. You say you remained in bed until about one o'clock? A. Somewhere along there; yes, sir.

Q. And did you get up first, or did he get up first?

A. I don't remember.

Q. Do you recall if he was still in bed when you

(Testimony of Kenneth E. Holden.)

left your bed? A. No, I do not.

Q. What did you do after you got up?

A. Reed and I had some work to do on the rotary—went over and worked about two or three hours on the rotary.

Q. What work did you do on the rotary?

A. Tightening up nuts and bolts and one thing and another.

Q. And then what time did you start south, for Cordova? A. About 4 o'clock.

Q. And the rotary came on down to Bridge 75A?

A. Yes, sir.

Q. And it was at this point that the rotary was derailed? A. Yes, sir. [167—114]

Q. Do you know anything of the conditions that existed there at the time? A. No, sir.

Q. You were caught in the rotary yourself?

A. Yes, sir.

Q. Where were you taken? A. Chitina.

Q. Did you see the bridge after you were taken out? A. No, sir.

Q. Who composed the crew of this particular train that was pushing the rotary, if you remember?

A. Mr. Lee—

Q. Who is Mr. Lee?

A. The engineer on the first pusher.

Q. He had charge of the first pusher, did he?

A. Yes, sir.

Q. Who had charge of the second pusher?

A. Mr. Dan Barrett.

(Testimony of Kenneth E. Holden.)

Q. Where is he? A. I don't know.

Q. And Mr. Reed had charge of the rotary?

A. Yes, sir.

Q. Do you know what caused the rotary to become derailed? A. I did not at the time, no, sir.

Q. Did you examine it in order to find out?

A. No, sir.

Q. Do you know now? A. Yes, sir.

Q. I will ask you what did cause it.

A. The bridge burned is all I know about it.

Q. And it fell through because of the burned bridge? [168—115] A. Yes, sir.

Q. And what rotary was that? A. X1.

Q. The small rotary? A. Yes, sir.

Mr. BORYER.—That is all.

Redirect Examination.

(By Mr. COBB.)

Q. It is the same rotary you left Cordova with?

A. Yes, sir.

Q. Is there any reason why you cannot remember definitely all that transpired going up about stopping, etc.?

A. It is not a pilot's duty to know what is going on behind him—when they are backing up and if he has any chance to rest he is going to rest when they are backing up.

Q. Were you in need of rest?

A. No, not necessarily.

Q. How long had you been on duty at that time?

A. From 12 o'clock on the 30th until whatever time

(Testimony of Kenneth E. Holden.)

we stopped there.

Q. The evening of the 31st? A. The 31st.

Q. Did you take some rest while you were there—what you could get?

A. I snatched a little bit there; yes, sir.

Q. When you left here did you know pretty well what sort of a trip you were up against?

A. Yes, sir.

Q. That was generally understood,—there was a hard trip ahead? A. Yes, sir.

Q. And there had been a number of hard trips before that? [168½—116] A. Yes, sir.

(By Mr. BORYER.)

Q. How did you know what kind of a trip you had ahead of you?

A. Because it was the time of the year for hard trips.

Q. Some trips you go through in a short time, do you not? A. Yes, sir.

Q. In how many hours?

A. From Cordova to Teikhell?

Q. Yes. A. Six or seven hours.

Q. In the winter-time? A. Sometimes; yes.

Q. And sometimes it takes longer?

A. Yes, sir.

(By Mr. COBB.)

Q. There is a telegraph line up the road, is there not? A. Yes, sir.

Q. And you can always tell pretty well what you are up against before you leave? A. Yes, sir.

(Testimony of Kenneth E. Holden.)

(By the COURT.)

Q. Explain to the jury what lights, if any, you have on your rotaries and what motion the rotary takes in shoving the snow out or clearing the track and whether it came up above the top of the rotary.

A. We have no lights on the rotary at all, and the snow generally goes to the side of the rotary, from whatever direction the wheels are working—it goes clear out to the side, sometimes ten or twenty or thirty feet.

Q. In going out, does it go out above the top of the rotary? [169—117] A. No, on one side.

Q. You have a clear view, then, on one side, on this occasion, on the right-hand side? A. Yes, sir.

(By Mr. BORYER.)

Q. Why don't you have lights on the rotary? You couldn't use them, could you? A. No, sir.

Q. (By Juror PEDERSEN.) Was the rotary in operation at the time the accident occurred?

A. It was.

Witness excused. [170—118]

[Testimony of Charles Kitsman, for Plaintiff.]

CHARLES KITSMAN, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Charles Kitsman.

Q. Where do you live? A. Cordova.

Q. How long have you lived here?

A. Since September, 1909.

(Testimony of Charles Kitsman.)

Q. What is your occupation? A. Fireman.

Q. Where are you employed?

A. Copper River & Northwestern Railroad.

Q. How long have you been employed by them?

A. Since September—I think the 29th—1909.

Q. You were in the employ of the Copper River & Northwestern Railway Co., then, in the month of December, 1911, and January, 1912? A. Yes, sir.

Q. What were you doing?

A. I was firing at the time.

Q. Were you on the train that left Cordova for Teikhell about the 30th of December, 1911?

A. Yes, sir.

Mr. BORYER.—I suggest the witness be required to state what he means by “about”—there were two trains, one left on the 29th and one on the 30th.

Q. What time did you leave here on the 30th?

A. I don't just exactly remember. It was some time in the forenoon, I think. [171—119]

Q. On what engine were you firing?

A. Engine 21.

Q. What was the engine doing on that train?

A. Second pusher.

Q. Who was your engineer? A. Mr. Barrett.

Q. The gentleman that has been testified to has gone out? A. Well, he is not here at present.

Q. Did anything happen to the rotary on your way, on that trip?

A. Not that I know of, no, sir.

Q. If it had broken down you would have known it?

(Testimony of Charles Kitsman.)

A. Well, I suppose so if I went around there; yes.

Q. You took the same rotary through, did you not?

A. Yes, sir.

Q. What time did you reach the trestle at Bridge

75A? A. On our way up?

Q. Yes.

A. Well, it was some time in the evening.

Q. Evening of what day? A. The 31st.

Q. You couldn't state the hour? A. No, sir.

Q. Do you think it was prior to 9 o'clock?

A. Somewhere between then and midnight.

Q. When you reached there, did the train stop?

A. You mean at the trestle?

Q. Yes. A. No, we went over the trestle.

Q. How far did you go?

A. I couldn't tell you how far it was.

Q. About? [172—120]

A. Probably half or three-quarters of a mile,—probably more than that.

Q. Then what did you do?

A. I heard that they ran short of water and they were deciding on shoveling the snow some way or other and some were talking about going back to this bridge and siphoning water—they would make more headway that way.

Q. Did they go back to the bridge?

A. Yes, sir.

Q. Backed back? A. Yes, sir.

Q. When they got there what was done?

A. Well, I walked up there to see if they would strike water because it was a glacier stream and I

(Testimony of Charles Kitsman.)

thought it would be frozen over that time of the night, and here were some section-men that chopped a hole in the ice and got water, and everybody was around there, quite a bunch around there, and I don't know if they were siphoning water there but I am pretty sure they did.

Q. Where were those section-men from?

A. I should judge they were from 78.

Q. Is there a section-house there? A. Yes, sir.

Q. How far from this bridge?

A. The bridge is on 75 or Mile 76 and the section-house is 78; there is a water-tank there.

Q. A couple of miles? A. Yes, sir.

Q. What became of those section-men?

A. I don't know—I couldn't tell you. [173—121]

Q. Did you leave them at the bridge?

A. I don't know.

Q. Do you know what they came back there for?

A. I suppose to help coal up.

Mr. BORYER.—We move to strike the answer.

By the COURT.—It may stand.

Q. How long were you at this bridge?

A. I should judge between an hour and two hours, something like that.

Q. The other engines got water there?

A. Not that I know of; no, sir.

Q. After you got through getting the water, what did you do?

A. I don't know whether they coaled up afterwards or before but after we got all through, we went to 78.

(Testimony of Charles Kitsman.)

Q. You don't know whether they coaled up before they got water or after?

A. No, I don't remember.

Q. They did coal up there? A. Yes, sir.

Q. Tell the jury how that coaling up was done—is there a coal chute there? A. No, sir.

Q. Tell them how it was done.

A. They had to put the coal off on the snow bank, off a car on the local, and then back up with the rotary and put it on the rotary.

Q. These two hog engines were coupled to the rotary at all times? A. Yes, sir.

Q. And when the rotary was on the bridge they were standing there too? [174—122]

A. Yes, sir.

Q. They were both on the bridge?

A. I couldn't tell you that,—I don't know whether the bridge would hold two locomotives.

Q. You don't know how long it was, but they were coupled right up to it?

A. They were coupled up; yes, sir.

Q. Do you know anything about any fires being cleaned there from any of the engines?

A. I couldn't say whether there was any fire dumped there or not—I couldn't say.

Q. How long have you been a fireman?

A. I have followed it off and on since 1907.

Q. Is there any danger from a locomotive standing or running over a road from fire getting on the track from the engine, whether there are ashes cleaned from it or not? A. There may be.

(Testimony of Charles Kitsman.)

Q. Explain to the jury how that happens?

A. Well, I will tell you; it depends what kind of a pan is on your locomotive.

Q. How?

A. If you have got a flat pan and both dampers are open and you are speeding along, if it should happen that any fire should drop through, the wind would naturally blow it right out of the pan.

Q. What sort of pans do you have on your locomotive, the engine you were on?

A. It is a hoe-pan—was at that time.

Q. A hoe-pan? A. Yes, sir.

Q. Which way did it hoe? [175—123]

A. It hoed out in the rear or to the front.

Q. It didn't hoe to one side? A. No, sir.

Q. Now, is there any danger from fire from the pans becoming too full of ashes and fire falling out from it? A. I couldn't tell you about that.

Q. This was not a pan you could dump from the train? A. No, sir.

Q. You had to get down under it?

A. From the deck you mean? Dump from the deck?

Q. Yes. A. No.

Q. You had to get down under the train?

A. Yes, you had to get down to hoe it out.

Q. These four engines, then, passed over that bridge three times. They passed it going up, they passed back across it to get coal—backed on to it for water and then back to get coal and passed on over it again on the way up to Teikhell?

(Testimony of Charles Kitsman.)

A. To take coal they had to back over it, yes.

Q. So they passed over this bridge, these four engines, on that occasion, three different times?

A. The three locomotives and the rotary; yes, sir.

Q. What time did you get to Teikhell?

A. We got there the morning of the first some time.

Q. Do you recall the time?

A. No, sir, I could not.

Q. When you got in there, did you have any work to do—after you reached there?

A. No, not on my locomotive, no, because we had a watchman.

Q. How is that?

A. No, I didn't have any work. [176—124]

Q. You went off duty as soon as you got in?

A. Yes, sir.

Q. What time were you called?

A. We were called some time about midday, about noon some time, but we didn't leave there at the time we were called.

Q. Do you know why?

A. As far as I know, they had some work to do on the rotary.

Q. Who was doing that work? A. Reed.

Q. They were to get out at noon but couldn't do it because of this work on the rotary that Reed was doing?

A. As far as I understand; yes.

Q. You saw him at work there, did you?

A. I don't know, I never was up there.

Q. You don't know? A. No.

Q. Now, when you left there—you left at 4 o'clock?

(Testimony of Charles Kitsman.)

A. Just about, yes, sir.

Q. Do you know what time you got to this bridge on your return?

A. It was about—it was between 7 and 8 some time.

Q. Between 7 and 8? A. Yes, sir.

Q. When you got to the bridge, did anything happen?

A. Why, I felt a sudden stop; yes, sir.

Q. Then what did you do?

A. Mr. Barrett was looking out of the window and he turned around and said something to me about the rotary being in the ditch, and that is all he said, and jumped out, and I jumped across and looked out of the window and I see the rotary in the ditch, so I jumped out of the window and went [177—125] over there.

Q. On which side did the rotary turn?

A. It turned to the right.

Q. As it was coming this way? A. Yes, sir.

Q. When you got around to the front what did you see?

A. Well, when I got to the rotary I saw Wilson there with a lantern and I saw Mr. Albright, the fireman—he was in the coal buried up; so I got in there and tried digging the coal away from him, helped to dig him out. So we got him out and helped carry him back to the coach and stayed there a while, and by that time they were deciding to go back to Chitina, so I left for the engine I was on—we were low of water and thought it would be a good idea to get over there.

Q. How is that?

(Testimony of Charles Kitsman.)

A. I was in the coach—I helped carry Albright into the coach and stayed in there a few moments taking off his shoes or shoe packs, what he had on, and by that time they had decided to go back to Chitina, so I thought I would have to go on the engine, so I went over on the engine I was on.

Q. Did you help get Holden out?

A. No, I did not.

Q. Did you see them getting him out?

A. No, sir.

Q. You were busy all the time getting Albright out and taking him back? A. Yes, sir.

Q. Do you know what became of Reed, did you know?

A. No, I did not. What became of him? [178—126]

Q. Yes, what became of him?

A. He was underneath the boiler.

Q. You saw the men trying to get him out?

A. I saw a number of men around there and heard them chopping.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. Are you certain that you went through with the same rotary that you started with from here on the 30th?

A. Yes, sir—well, I am pretty certain; yes.

Q. Have you any means whereby you could refresh your memory to determine which rotary you went out on and whether that rotary continued all the way to Teikhell?

(Testimony of Charles Kitsman.)

A. Well, yes, I think it was the X1 the time we left.

Q. You think it was X1—that was the small rotary? A. The small rotary; yes, sir.

By the COURT.—I think we will adjourn at this time.

Mr. BORYER.—I would like to say to the witness, I would like to have you refer to any memoranda you can so you can determine definitely as to what rotary you left on and whether that rotary went clear on to Teikhell, by the morning.

The WITNESS.—Yes, sir.

Whereupon court adjourned until to-morrow (Friday) morning, May 2, 1913, at 10 o'clock.

Friday, May 2, 1913.

MORNING SESSION.

Continuation of the cross-examination of CHARLES KITSMAN.

(By Mr. BORYER.)

Q. You left here, on what day was it?

A. It was the forenoon, on the 30th.

Q. What rotary *preced* you? [179—127]

A. What do you mean? What we went on through with?

Q. No, which rotary did you start out of Cordova with?

A. I think we started on X2, to the best of my knowledge—we went to Mile 52 and broke down.

Q. That is the large rotary?

A. That is the large rotary.

Q. Then when you got to 52 you had a breakdown there with rotary X2? A. Yes, sir.

(Testimony of Charles Kitsman.)

Q. Do you recall what was broken?

A. I don't know. I didn't go up—just what I heard say that they broke a quarter-shaft and blew out a cylinder-head.

Q. Then where did you go?

A. Back down to 39, I think it was, where we could get water.

Q. And what did you do there—what became of rotary X2?

A. I think they took her down on one side, put her so she would run on one side.

By the COURT.—Explain to the jury what you mean by that.

A. That is in order that she will run on one side. If one side is broke, he would have to close up her port-hole so she would only run steam on one side, one cylinder.

Q. Then after you had done this work, what did you do with the rotary—before that, how long were you there, about how long?

A. I couldn't tell you how long we were there.

Q. Several hours, were you?

A. Yes, we must have been there a few hours; yes.

Q. Do you know who was doing this work on the rotary?

A. I didn't go up there, but I suppose it was Mr. Reed and the fireman,—probably somebody helping him.

Q. I am trying to get what you know. [180—128]

A. I didn't go up there that I remember of.

Q. You don't know, then, who did the work?

(Testimony of Charles Kitsman.)

A. No, sir.

Q. Where did you stay?

A. I was on the engine of the second pusher.

Q. You stayed on the engine? A. Yes, sir.

Q. Then where was your next move?

A. I think we went to Miles Glacier.

Q. Do you know what for?

A. To change rotaries there.

Q. Then you went back up toward Chitina, to Miles Glacier, did you? A. Yes.

Q. What mile is that? A. Miles Glacier?

Q. Yes. A. 49.

Q. And you had gone back to what mile?

A. 39.

Q. That is where you got your water for the rotary?

A. I couldn't say whether they done all of it there or done some of it at the glacier.

Q. I am trying to get the miles, so the jury can understand the moves you made, up or down. There is no place to turn the rotary at 39? A. No, sir.

Q. Is there a place to turn the rotary at the Miles Glacier? A. Yes, sir.

Q. Then you proceeded from Mile 39 out to the glacier, and when you got to the glacier, about what time was it? [181—129]

A. I couldn't tell you what time it was.

Q. Was it dark?

A. I think it was. It was some time in the evening—I am not certain.

Q. Did the large rotary turn at Miles Glacier?

A. Yes, sir.

(Testimony of Charles Kitsman.)

Q. And where did it go?

A. I suppose it went back to Cordova.

Q. Had the little rotary, or X1, arrived at the glacier before the rotary that you had broken departed for Cordova?

A. Yes, I think it did—yes, I know it did.

Q. About how much time did you spend at the glacier?

A. I couldn't tell you. Probably a half hour or an hour, something like that.

Q. And then the small rotary, the rotary X1 as it is known, proceeded ahead of the local, did it?

A. Yes, sir.

Q. Towards Chitina? A. Yes.

Q. Now, then, when did you make your next stop?

A. I couldn't tell you that—we are liable to stop almost any place.

Q. Do you recall making any stop—did you go through the canyon?

A. Yes, we stopped at the water tank at 55, I know.

Q. Did you have any work at the canyon with the rotary? A. Yes, sir, there was work.

Q. About how long were you going through that canyon?

A. I couldn't tell you how long it was.

Q. Have you any idea? A. No, sir. [182—130]

Q. Then you say you left Miles Glacier some time during the night? A. I think it was; yes.

Q. Did you work through the canyon during the night? A. I think we did.

(Testimony of Charles Kitsman.)

Q. And you reached 55? A. Yes, sir.

Q. And there you took water? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. How long were you taking water at 55?

A. I don't know how long we were there—it doesn't take long to take water.

Q. About how long does it take?

A. I should judge, to water up the three locomotives it would take about thirty minutes.

Q. Did you water all three locomotives?

A. I know I watered the one I was on.

Q. Do you know if the rotary took water there?

A. I couldn't tell you but I suppose it did.

Q. Then you started from 55—you don't know about what time it was you left 55?

A. No, I couldn't tell you.

Q. How was your work further on up to Bridge 75A in regard to snow conditions?

A. We were fighting snow all the way up.

Q. Any wind?

A. Oh, there might have been a little breeze; yes.

Q. Do you recall whether there was any breeze or not? [183—131]

A. I couldn't tell you whether it was stormy or anything like that. It generally does blow through there.

Q. Do you recall crossing Bridge 75A?

A. Yes, sir.

Q. On your way up? A. Yes, sir.

Q. Did you pass over that bridge on your way up?

A. Yes, sir.

(Testimony of Charles Kitsman.)

Q. Did you stop after you had gotten across the bridge?

A. They stopped in a snowdrift there after they had gotten across some distance.

Q. About how far would you say?

A. I couldn't tell you how far it is. Probably half or three-quarters of a mile—probably more than that.

Q. Then what did you do after that, after stopping there?

A. Well, the rotary ran out of water there and they decided, were talking about going back and siphoning water at this bridge.

Q. At what bridge? A. 75A.

Q. What did you do?

A. Backed up then to the bridge and siphoned water.

Q. The local backed up?

A. I suppose it did—I didn't see the local there.

Q. She was following close behind you?

A. Yes, sir.

Q. She would have to back up in order to get out of the way? A. Yes, sir.

Q. A single track, is it? A. Yes, sir.

Q. When you got down to the bridge what was the position of [184—132] your engine with reference to the rotary?

A. She was the second engine, the second pusher.

Q. Who was your engineer? A. Mr. Barrett.

Q. When you stopped to siphon water, where was your engine standing?

(Testimony of Charles Kitsman.)

A. Well, it was on the south end of the bridge.

Q. The south end of the bridge would be toward Cordova? A. Toward Cordova; yes, sir.

Q. How far off the bridge was it?

A. I couldn't tell you. There might have been some part of it on the bridge and might not. It depends where the rotary stopped.

Q. Do you know if it was or was not?

A. I couldn't tell you.

Q. Were you off of your engine during the time that you staid there? A. Yes, sir.

Q. Do you recall how you got off your engine?

A. I got off through the gangway.

Q. Do you recall if you stepped on the bridge or stepped on the ground?

A. I got off in the snow.

Q. Then you were not on the bridge, were you?

A. I don't think I was; no.

Q. To the best of your judgment, would you say that you were or were not on the bridge?

A. I would say I was not.

Q. What was being done, if anything, by the other engines which you saw when you got off of your engine? [185—133]

A. There wasn't anything done, only they were siphoning water. I was up there where they were siphoning the water. I was up in the rotary.

Q. You were up in the rotary? A. Yes, sir.

Q. Did you clean your pan at this place?

A. No, sir.

Q. Are you certain of that?

(Testimony of Charles Kitsman.)

A. Yes, sir; I am certain.

Q. Did you clean your fires there?

A. Not that I know of; no, sir.

Q. And you are certain you did not dump your pan there? A. No.

Q. You would know if you did? A. Yes, sir.

Q. Where was the local at that time?

A. It was on the south end of us, toward Cordova.

Q. Then if you were not on the bridge with your engine the local could not have been on the bridge?

A. No, sir.

Q. Where was your engineer while you were stopped there?

A. I couldn't tell you where he was. He was on the engine.

Q. And you are certain that he gave you no instructions to clean your pan there? A. Yes, sir.

Q. And you say that you got off of your engine and walked up past under pusher engine?

A. Yes, sir.

Q. Which was attached to the rotary—and got on to the rotary? A. Yes, sir. [186—134]

Q. Who did you see on the rotary?

A. I saw Mr. Albright on there.

Q. Who is Mr. Albright?

A. The fireman of the rotary.

Q. Were you talking with him?

A. I think I did; yes.

Q. What was he doing?

A. Well, he was working back in the boiler-head there.

(Testimony of Charles Kitsman.)

Q. What kind of work was he doing?

A. I think he was putting in a fire or something like that.

Q. Cleaning his pan? A. No, sir.

Q. He was working with his fire?

A. Yes, he was putting in a fire—doing something back there. I don't just remember what.

Q. Did you see Mr. Reed?

A. I have seen him at a distance; yes.

Q. Do you recall if you did see him?

A. I wouldn't say for sure whether I did or not. There was quite a number of them standing down there in the snow.

Q. Did you see Mr. Reed on the engine, on the rotary? A. There at the bridge?

Q. Yes.

A. No, I don't think I did. It was dark, you know.

Q. Albright was on the rotary when you saw him?

A. Yes.

Q. Working with his fires? A. Yes, sir.

Q. Did you see Mr. Holden?

A. I don't think I did. I don't remember as I did.

[187—135]

Q. Do you remember if you saw Mr. Reed?

A. I saw Mr. Reed before that, yes.

Q. I mean on the engine, on the rotary, at this time? A. I don't remember as I did.

Q. Did you see Mr. Reed at all while you were stopped there?

A. I might have seen him down on the ground there

(Testimony of Charles Kitsman.)

where they were chopping a hole in the ice; there was quite a number of them down there.

Q. You mean by saying that you might have seen him that you did see him or don't know whether you did see him or not?

A. I might have saw him; yes.

Q. Do you know whether you did see him?

A. I might see him at a distance in the night; yes.

Q. You saw him, did you?

A. He might have been there and might not have been there.

By the COURT.—I think you have gone over that enough.

Q. Now, then, how long did you remain there?

A. I should judge we were there probably one or two hours.

Q. You went back, then, to your engine, did you?

A. Yes, sir.

Q. And what did you do after you went back to the engine?

A. I suppose I tended to the fire, that is, kept up steam and kept water in the boiler and watched out.

Q. Did you do that? A. Yes, I did.

Q. Then, where was your next move?

A. I think we backed up and took coal.

Q. At the place where coal had been unloaded?

A. Yes, sir.

Q. Then you loaded your coal and started for where? A. 78. [188—136]

Q. About what time did you arrive at 78?

A. It was some time about, I should judge, be-

(Testimony of Charles Kitsman.)

tween ten and twelve, something like that. I couldn't exactly say what time it was.

Q. That night? A. Yes, sir, that night.

Q. Did you take water at 78?

A. Yes, sir.

Q. And how long did you stay at 78?

A. I think we had lunch there. It would probably take an hour or an hour and a half—something like that.

Q. Then what time did you arrive at Teikhell?

A. We got into Teikhell the next morning. I should judge it was daylight when we got there. I don't know. It was about 7 o'clock—something like that.

Q. What time did you quit work there?

A. I quit as soon as we got there.

Q. Seven o'clock or eight o'clock?

A. Yes; somewhere about that.

Q. Then after you quit work, where did you go?

A. I went to bed.

Q. Where did you go to bed?

A. In the caboose.

Q. Who was in the caboose when you went in there?

A. I don't know who all was in there—I think Scott was in there.

Q. Who is Scott?

A. George Scott, the brakeman.

Q. The brakeman of what? [189—137]

A. The rotary.

Q. Who else?

(Testimony of Charles Kitsman.)

A. I think Mr. Barrett. I think I and Barrett went back together.

Q. And who else?

A. I couldn't exactly say who all was in there.

Q. Was Reed in there?

A. No, not when I went back. No, I don't think he was.

Q. Was Albright in there?

A. No, I don't think he was.

Q. Holden? A. I didn't see him.

Q. Do you recall anyone else who was in there at that time?

A. Not that I know of, no; they might have come in just a little later on.

Q. How long after you had gone to the caboose to go to bed was it before Holden came in?

A. I couldn't tell you.

Q. Do you know if he came in?

A. I couldn't tell you. I went to sleep after I got in there.

Q. Do you know if Reed came in?

A. I couldn't tell you.

Q. Do you know if Albright came in?

A. I couldn't tell you. I think I was asleep before they got back in there.

Q. What time did you get up?

A. Twelve or one o'clock,—something like that.

Q. After you had gotten up, did you stay in the caboose any of the time?

A. No, I think we just got up in time to get up and get something [190—138] to eat at the section-

(Testimony of Charles Kitsman.)

house and when we came back from there I think I went on the engine.

Q. Who was in the caboose when you got up?

A. I couldn't tell you who was all in there.

Q. Do you know if Holden was in there?

A. The time I got up?

Q. Yes.

A. I wouldn't say for sure, but I think they were all in there—I don't think anybody was up then.

Q. You think Holden was in there?

A. I think he was.

Q. And you think Albright was in there?

A. I think he was.

Q. And you think Reed was in there?

A. I think he was.

Q. You think all of the crew was in there?

A. I think they called us all at the same time.

Q. After you had your dinner what did you do?

A. I went on the engine.

Q. What time did you leave there?

A. Some time about 4 o'clock.

Q. How long did you stay on the engine?

A. When?

Q. When you went on the engine after eating your dinner.

A. I might have been off and on around there from 12 or 1 o'clock to 4, probably didn't stay right on the engine.

Q. Who was taking care of your fires from that time until the time you got ready to leave?

A. From one o'clock?

(Testimony of Charles Kitsman.)

Q. Yes. [191—139]

A. I might have taken care of them myself or the watchman may have been around there and he might have taken care of them, or probably Mr. Barrett took care of them.

Q. Don't you know that the watchman did take care of your fires?

A. He was supposed to take care of the fires, yes, while I was asleep.

Q. And don't you know he took care of your fires up to about the time you left?

A. Probably he did while I was not there.

Q. While you were at Bridge 75A did you see anyone clean their pan at that point, on that bridge?

A. I couldn't say that I did, no, sir.

Q. Did you see Mr. Albright working on his pan?

A. I don't know that I did see him working. I was talking to him there—I don't know that I see him dump any ashes there or anything.

Q. This was in the winter-time, was it not?

A. Yes, sir.

Q. The ground was all covered with snow?

A. Yes, sir.

Q. Cold weather? A. Yes.

Q. Was it you that said something about sprinklers up and down the Copper River & Northwestern Railroad? A. No, sir.

Mr. BORYER.—That is all.

(By Mr. COBB.)

Q. Does your engineer always tell you when to dump your ashes? A. No, sir. [192—140]

(Testimony of Charles Kitsman.)

Q. Or where to dump them? A. No, sir.

Q. That is the fireman's business?

A. Well, he is supposed to know it; yes.

Q. When you got up, out of the caboose, at Teikhell, you were called?

A. I think somebody woke us up; yes.

Q. Called to go on duty?

A. I suppose so; yes.

Q. And did go on duty—that was somewhere between 12 and 1?

A. Something like that; I couldn't exactly say.

(By Mr. BORYER.)

Q. You say the engineer doesn't tell you always when to dump your ashes?

A. That depends—if he has a green fireman, he naturally would tell him; yes.

Q. Why would he tell him?

A. Instruct him what he is supposed to do.

Q. It is the engineer's duty to instruct him?

A. Yes, sir.

Q. The engineer has charge of the engine?

A. Yes, sir.

Q. Working on the engine? A. Yes, sir.

Q. And is responsible for the engine?

A. The engine is in his charge.

Q. He has supervision over you and the fires?

A. I suppose he has; yes.

Q. You know it is against the rules to dump your fire on the bridge, don't you? [193—141]

A. Yes, sir.

Q. You know it is against the rules to even dump

(Testimony of Charles Kitsman.)

the fires on the ties, do you not, without putting the fire out and throwing it off the track?

A. There are lots of places that they tell you to dump cinders—there are certain places where they tell you to dump cinders.

Q. They have certain specified places?

A. Some roads, yes.

Q. And after you dump them, what do you do?

A. There are lots of times they used to dump them on the run, dump them in the city limits.

Q. You put your fires out then?

A. When they dump them on the run?

Q. No, not on the run—when you dump your fires, don't you usually put your fire out?

A. Well, if there is any danger; yes.

Q. There is always danger where you dump your fires, isn't there? A. A live fire, yes.

Q. Then how do you put them out?

A. Generally shovel them off the track or turn the hose on it, wet it.

(By Mr. COBB.)

Q. Did you ever see such rules as you have spoken of here? A. As to dumping cinders?

Q. Yes.

A. The Great Northern has got signs out where it says, dump cinders here.

Q. Any signs of that kind on the Copper River & Northwestern? A. I never seen any. [194—142]

Q. Did you ever see any rules issued by the Copper River & Northwestern Railroad Co. regarding these matters, printed or written rules?

(Testimony of Charles Kitsman.)

A. That is certain places to dump cinders?

Q. Yes, or about the duties of the fireman at all?

A. Well, the fireman has got his duties; yes.

Q. Did you ever see any rules?

By the COURT.—The question is whether there are any printed or written rules regarding the duties of firemen for this company?

A. Yes, there are printed rules here.

Q. Have you seen them? A. Yes, sir.

Q. When you were at this bridge, do you know whether you had your dampers open or not?

A. I couldn't tell you.

Q. Do you usually have them open when you stop?

A. That depends,—if the engine has a draft, you open your engine, your dampers.

Q. The draft has a tendency to stop when your engine stops,—it is not so strong as when you are running?

A. Generally when you are running, you don't need to.

Q. To have your dampers open?

A. Yes—sometimes it is hard to tell.

Q. You don't recall now?

A. No, I could not.

(By Mr. BORYER.)

Q. You don't know, then, if you had your dampers open or not? A. No, sir, I couldn't tell you.

Q. You were not on the bridge? [195—143]

A. I don't think I was. There might have been some part of the engine on the bridge. I wouldn't say.

(Testimony of Charles Kitsman.)

Q. You say you have seen rules regarding the extinguishing of your fires. I will ask you to look at this rule and ask you if that is the rule you have reference to. (Handing witness paper.)

A. I think I saw that rule when I was up for Heney on the construction.

Q. That is the rule you have reference to?

A. I think I seen it; yes.

Mr. BOYER.—I wish to introduce in evidence the rule just spoken of.

Mr. COBB.—We have no objection.

It is admitted as Defendant's Exhibit Number 1.

Mr. BORYER.—This is in the regular bulletin-book, and I ask permission that a copy may be substituted, so the original may remain in the book.

Request granted.

Mr. BORYER.—I desire to read it to the Jury.

“Cordova, Alaska, July 16, 1910.

To All Engineers, Firemen, Hostlers and All Concerned:

Do not fail to extinguish *All* fire in ashes removed from ash pans.

No excuse will be taken for the burning of ties, or other damage to property, as a result of a failure to do this. Engineers will be held equally responsible with their firemen in this matter.

(Signed) J. R. VAN CLEVE,
Superintendent.”

Q. (By Juror MANTHEY.) Have you any examinations here on this road for firemen, brakemen and engineers? A. No, sir. [196—144]

(Testimony of Charles Kitsman.)

Juror PEDERSEN.—I wish to ask the witness two questions: Will you please describe to the jury all the work the watchman would do upon your engine during the time you were not on duty at Teikhell?

A. Well, when I was watching, why I had to clean the fire, clean out the ash-pan and take care of the engine—that is, keep steam on it and see that it didn't freeze up, if it is in the winter-time.

Q. Did the watchman clean the ash-pan of your engine? A. Yes, sir, he did.

(By Mr. BORYER.)

Q. Before you started to work for this company were you required to give your qualifications?

A. Yes, I had to fill out an application. I went to work for the construction when I went to work here.

Q. And when you came over to the operating department, did you fill out an application?

A. I did, after I went to work for the operating department.

Q. When you commenced working for the Copper River & Northwestern Railway Co. you filled out an application? A. Yes, sir.

Q. Did that application require you to state upon what roads and what experience you had had as a trainman? A. It was supposed to; yes.

Q. Did you fill it out?

A. I filled out some of it; yes.

Q. According to the questions requested in the application? A. Yes, sir.

Q. (By Juror MANTHEY.) Were you examined

(Testimony of Charles Kitsman.)

by a physician—go through the ordinary examination like you do on any other road? [197—145]

A. Here?

Q. (By Juror MANTHEY.) Yes.

A. No, sir.

Q. (By Juror HUNT.) Is there a bridge between 75A and 78? A. Yes, there is one.

Q. In coming this way you make a turn to the left and then another to the right before you reach 75A?

A. Coming this way?

Q. Yes.

A. You turn to the right and then to the left, yes.

Q. First to the left and then another turn to the right, before you reach this bridge?

A. Yes, sir.

Witness excused. [198—146]

[Testimony of Harry N. Wilson, for Plaintiff.]

HARRY N. WILSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Harry N. Wilson.

Q. What position do you hold, if any, with the Copper River & Northwestern Railway Co?

A. Trainmaster.

Q. How long have you been in the employ of the company? A. About three years.

Q. You were in their employ then in the month of December, 1911, and January, 1912?

A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. Have you with you the train sheets showing the time of departure and arrival of trains?

A. Yes, sir.

Q. For those months? A. Yes, sir.

Q. I wish you would state to the jury, beginning with the 12th say, the arrival and departure of trains up the line, from then on down to the first day of January. A. The 12th of December?

Q. Yes.

A. I haven't anything back of the 28th with me, December 28th.

Q. Can you get those for us? A. Yes, sir.

Q. I will ask you to get them.

Mr. BORYER.—What time?

Q. From the tenth or twelfth of December, somewhere along there—now, about the 28th—refer to that.

A. What do you wish to know? [199—147]

Q. I want to know what time the train left here that day. A. Which train?

Q. Did you have more than one train?

A. Yes, sir.

Q. Give us both of them.

A. Train #1 left Cordova at 8:10 on the 28th.

Q. What did that train consist of?

A. Three cars of lumber for Kennecott; one car of lumber for Chitina; one car of lumber for McCarthy Creek; one of merchandise and one coach and one dining-car, engine 102.

Q. Did anything go out ahead of it?

A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. What? A. A rotary.

Q. What rotary?

A. Rotary X1, the small rotary.

Q. That is what is called the little rotary?

A. Yes, sir.

Q. Did that train get through? A. No, sir.

Q. How far did it go?

A. It went to Katalla Junction, Mile 39.

Q. Why didn't it go through?

A. They broke an eccentric strap on the rotary.

Q. What time did it get to Mile 39?

A. At 3:30—that is the time it got there after this accident.

Q. What time did it leave here? A. 8:10.

Q. Do you know where the accident happened?

A. The accident happened at Mile 37.

Q. You have no memorandum of what time it got there? [200—148]

A. I have not; it passed Flag Point at 9:55.

Q. What was done then with that train?

A. Returned to Cordova.

Q. What time did it get back to Cordova?

A. 1:10 on the 29th. This rotary was substituted by rotary X2 from Cordova and they came out to Mile 39; went to Miles Glacier and changed and they went as far as Mile 51. The records show that they returned to Cordova on account of heavy drifts in deep cuts and decided that the small rotary was not capable of handling it and came back and took the large one—went as far as 51 and turned and came back.

(Testimony of Harry N. Wilson.)

Q. Because the small rotary couldn't handle it?

A. That was the decision; yes.

Q. They got back here at 1:10 on the morning of the 29th? A. Yes, sir; the morning of the 29th.

Q. Was there any train out that day?

A. Not on the 29th; no.

Q. They didn't send a train out then until the 30th; is that correct? A. On the 30th; yes, sir.

Q. On the 30th it was really this same train, was it not?

A. Well, it was some of the same train, yes.

Q. What rotary did you send out ahead of it?

A. Rotary X2.

Q. That is the big rotary?

A. That is the large rotary; yes.

Q. That was in front?

A. That preceded the train, yes.

Q. What time did that get out according to your train sheet? A. 12:35.

Q. What time did the train leave, following it?
[201—149] A. 1:05.

Q. Were you on that train?

A. On the rotary; yes, sir.

Q. What position were you in on it?

A. Conductor.

Q. Now, what time did you get back to Mile 51?

A. Going north on this trip?

Q. Yes, going north on this trip?

A. I don't know that I could tell you the exact

(Testimony of Harry N. Wilson.)

time we reached Mile 51. We passed Miles Glacier at 4.30.

Q. How far up is Miles Glacier? A. 49.

Q. You got there at 4.30? A. Yes, sir.

Q. Did anything happen that day to that rotary?

A. At Mile 52 the record shows here it broke key to crosshead and knocked out cylinder-head.

Q. You were conductor of it? A. Yes, sir.

Q. That is what happened?

A. We afterwards discovered that the boiler shaft was broken also.

Q. Then what did you do?

A. We backed up to Miles Glacier, called up the superintendent's office and told our troubles, and backed up to Mile 39 to wait for another rotary from Cordova.

Q. You called up the superintendent's office from Miles Glacier? A. Yes, sir.

Q. The superintendent's office was in Cordova?
[202—150] A. Yes, sir.

Q. What did the superintendent do? What was done then? A. We backed to Mile 39.

Q. What time did you get back there?

A. The record here shows we got there at 9:35.

Q. 9:35 in the evening? A. Yes, sir.

Q. Did you hear from the superintendent after you wired in to him?

A. I think I talked to some of them—they were sending another rotary from Cordova to replace the disabled one.

(Testimony of Harry N. Wilson.)

Q. Do you know what time that rotary reached Mile 39? A. 3:30.

Q. In the morning?

A. In the morning—the following morning.

Q. You don't know what time it left here?

A. It left here at 10:30.

Q. 10:30 in the evening?

A. 10:30 in the evening.

Q. That was the evening of the 30th?

A. Yes, sir, that was the evening of the 30th.

Q. And that took up the train and went on?

A. No, it went on to Miles Glacier and traded rotaries—we took the small rotary and gave them the large or disabled rotary.

Q. That took the place of the other rotary and went on ahead of that train? A. Yes, sir.

Q. Who brought that little rotary up?

A. You mean the entire crew?

Q. Yes. [203—151]

A. Van Trump was conductor. The engineer's name was Buchanan and the pushing engine—they only had one pushing engine—the fireman's name was Higginson.

Q. What became of them?

A. They returned to Cordova on the other rotary.

Q. You were at the scene of the accident in which Mr. Reed lost his life?

A. Yes, sir, I saw it shortly after it happened.

Q. You were conductor? A. Yes, sir.

Q. When the rotary went off, did you go around there? A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. I want you to tell the jury what you saw.

A. Well, the rotary was turned over on its side and the bridge was burned on one side, and the rotary turned over on its side and went down the bank, and the fireman was in the fire-room partly buried with coal, and I don't know that I saw the pilot at all. We went inside the rotary, got in at the top, trying to locate Reed. I didn't see the pilot—he was gotten out very shortly after.

Q. Did you succeed in locating Mr. Reed?

A. No, sir.

Q. Did you observe how much that side of the bridge was burned? A. I did not.

Q. Did you ever observe it?

A. No, not to make any positive statements. I know there was quite a bit of it burned.

Q. You say it was burned on one side?

A. Yes; if I remember right it was burned mostly on one side.

Q. Which side was that?

A. The right side going south. [204—152]

Q. The right side going south? A. Yes, sir.

Q. That would be the left side going north, of course? A. Yes, sir.

Q. Did you go back there at any time after that?

A. Yes.

Q. When was that?

A. I went back there. We went to Chitina and got some jacks and men and went back and tried to raise the rotary—I think we got there on the 5th.

Q. On the 5th of January—you observed the bridge then?

(Testimony of Harry N. Wilson.)

A. It had been burned up pretty bad; they had been trying to get stringers out of it to raise the rotary with and had taken all the good stringers.

Q. Can you tell me what man was the first back there after the accident happened? A. I cannot.

Q. You were not back there until the 5th and they had then torn the bridge up?

A. I think it was the 5th—I am not positive—we came there with men and jacks.

By the COURT.—I am not clear about that.

Mr. COBB.—I asked him if he was back there after they returned to Teikhell or Chitina, and I understood the witness to say that he was back there on the 5th.

The WITNESS.—I am not positive as to the date—it was as soon as we could get back after going to Chitina.

Q. Some days after?

A. Yes, whenever the train came back—fourth or fifth.

Q. You say the ties had been torn up then?
[205—153]

A. Yes, some of the decking had been taken off of the bridge, to get material to raise the rotary with.

Q. Do you know who did that?

A. The roadmaster was in charge of the work. I don't know.

Q. Who was the roadmaster?

A. His name was Stephen.

Q. Where was the section?

A. They were there.

(Testimony of Harry N. Wilson.)

Q. Where was the section-house that had that part of the road? A. 78.

Q. About two and a half or three miles away?

A. About that; yes.

Q. Where were those section men at that time?

A. They were there, I think.

Q. Didn't they go up to Teikhell with you at the time you went north?

A. On the trip prior to that?

Q. They all went up with you? A. Yes, sir.

Q. When did you bring them back?

A. When we came back the night of the first.

Q. The night of the accident you brought them back to 78? A. Yes, sir.

Mr. COBB.—That is all.

(By the COURT.)

Q. How many men were there in the section?

A. I couldn't say.

Q. About how many would you say?

A. About 7 or 8, probably. [206—154]

Cross-examination.

(By Mr. BORYER.)

Q. Why were those section-men taken up there?

A. They were taken to shovel snow and coal and engine and had other work to facilitate—

Q. How is that?

A. They were taken to shovel snow and had other work that was necessary to facilitate the movement of the train.

Q. That was in the line of their duties?

A. I suppose so; yes.

(Testimony of Harry N. Wilson.)

Q. That is the kind of work they do?

A. Yes, sir.

Q. Were you trainmaster at the time of this accident? A. No, sir.

Q. When did you receive your appointment as trainmaster? A. About two months ago.

Q. Were you present at the time that the rotary was broken at 52?

A. I was on the train; yes, sir.

Q. You came back with the train to Mile 39, did you? A. Yes, sir.

Q. How long did you remain at Mile 39?

A. The only way I could tell about that would be from the records here.

Q. Look at your records.

A. We remained there from 8:30 on the night of the 30th until 3:30 on the morning of the 31st—from 9:35 on the night of the 30th to 3:30 on the morning of the first.

Q. Then you got back there about 9 o'clock?

A. Yes, sir.

Q. And stayed there until—?

A. 3:30. [207—155]

Q. The next morning? A. Yes, sir.

Q. Did you see Reed that night? A. Yes, sir.

Q. Where was he?

A. Why, he was working, taking the rotary down. The rotary had to be taken down and run in on one side. He was taking the rotary down and making repairs necessary to bring it to Cordova.

Q. About how long did that take?

(Testimony of Harry N. Wilson.)

A. I couldn't say.

Q. Did he continue working there up to the time that the other rotary came or until you left there?

A. I couldn't say that. I think he did.

Q. Do you know where Mr. Albright was at that time? A. I don't remember.

Q. Was he firing that rotary? A. Yes, sir.

Q. Do you know if he was present there or not?

A. I think that he was part of the time, but I wouldn't say positively.

Q. Do you know where Holden was?

A. I think Holden went to bed shortly after we reached there. He laid down, as I recall.

Q. Now, you moved from there and went to Mile 51, did you not, or Miles Glacier, rather?

A. Yes, Miles Glacier.

Q. Rotary X2 was sent back to town for repairs?

A. Yes, sir.

Q. And rotary XI was sent on towards Chitina?

[208—156] A. Yes, sir.

Q. For the purpose of taking that train?

A. Yes.

Q. Now, do you recall how long you remained at Miles Glacier? A. I do not.

Q. Have you any idea? Doesn't your train-sheet show what time you left there?

A. The train-sheet shows fifty minutes.

Q. That you were there fifty minutes?

A. Yes, sir.

Q. You started then for Teikhell, did you?

A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. Where was your next stop, as you recall?

A. Abercrombie—55.

Q. What did you do there? A. Took water.

Q. About how long were you there, do you know?

A. I couldn't say—we left there at 8:30—it don't state the arrival.

Q. You left there at 8:30? A. Yes, sir.

Q. And you left the Glacier at what time?

A. 6:20.

Q. 6:20 in the morning? A. Yes, sir.

Q. Then you proceeded north toward Teikhell, and do you recall if you made any stops before you got to Teikhell? A. Why, yes, we made several stops.

Q. Of any duration?

A. We stopped to siphon water. [209—157]

Q. At Bridge 75A?

A. Yes. I am not positive whether we siphoned water at Baird River or not, but we siphoned water at Bridge 75A.

Q. You don't recall if you made any stops before stopping in order to return back to Bridge 75A?

A. I can't recall any stops; no.

Q. You did make a stop just on the north side, north end of Bridge 75A?

A. Yes, probably half a mile north.

Q. Then you returned to the bridge 75A, did you?

A. Yes, sir.

Q. For what purpose?

A. To siphon water for the rotary.

Objected to as not cross-examination. Question withdrawn.

(Testimony of Harry N. Wilson.)

(By Mr. COBB.)

Q. Where was your terminal on the north, where did you start for, when you left here on the rotary?

A. Sometimes we go to Teikhell and sometimes to Chitina. It depends largely on the conditions north of Teikhell.

Q. You didn't go further than Teikhell and turn back from there? A. At this time? Yes, sir.

Q. Of course you were in communication with the train-dispatcher, or do you have a train-dispatcher on this road? A. We have one; yes, sir.

Q. Did you have one at that time? A. Yes, sir.

Q. And the running of the train, what it shall be, is all under his supervision, pursuant to telegraphic orders from him? A. Yes, sir. [210—158]

Q. He directs when you start back from that terminal at Teikhell?

A. Yes, as a rule, when the wires are working so we can get into communication with him. There are times when you cannot and you have to use your own judgment.

Q. They were not down on this occasion?

A. Not that I remember, no. They were working, I think.

Q. I don't recall whether I asked you to refer to the time-sheet here and tell the jury what time that train reached Teikhell.

A. The train reached Teikhell at 5:45 on the morning of the 31st.

By the COURT.—Repeat that answer.

A. 5:45 on the morning of the 31st.

(Testimony of Harry N. Wilson.)

Q. The 31st of December?

A. Yes, sir, of the first.

Q. The first of January, you mean?

A. Yes, sir.

Q. Now, repeat that, so there won't be any question about it.

A. The train leaving here on the 30th reached Teikhell at 5:45 A. M. on the morning of January first.

Q. Does your train-sheet show what time the crew that took that train up were called for duty?

A. 11:45.

Q. What day? A. On the 30th A. M.

Q. That is leaving Cordova—leaving Teikhell, I mean?

* A. You mean called for duty to come back?

Q. Yes. A. One P. M.

Q. On the first? [211—159]

A. On the first.

(By Mr. BORYER.)

Q. At the time that you communicate with the dispatcher's office, superintendent's office, do you report conditions and make recommendations at that time?

A. I don't recall at that time whether we did or not.

Q. That is your custom, is it? A. Yes, sir.

Q. Now, you stated that the train-sheet shows that this train and rotary arrived in Teikhell at 5:45 on January first? A. Yes, sir.

Q. Refer to your train-sheet and see what time that train left southbound. A. 4:15 P. M.

(Testimony of Harry N. Wilson.)

Q. You were with the train when she reached Teikhell, were you? A. Yes, sir.

Q. After reaching Teikhell, what did you do?

A. You mean after we reached there going north?

Q. Yes; at 5:45.

A. We went to Mile 105 to the water-tank for water.

Q. After you had gotten water, what did you do?

A. We backed to Teikhell and turned and tied up.

Q. What time would you say that you tied up—does your sheet show?

A. This shows 9 o'clock, 9 A. M.

Q. That you tied up? A. Yes, sir.

Q. Now, as a matter of fact, what time did you retire that morning, about what time?

A. I don't remember what time I retired. [212—160]

Q. Do you know about what time Holden retired?

A. As soon as we arrived at Teikhell.

Q. That is about 5:45?

A. Six o'clock probably.

Q. Do you know what time Reed retired?

A. At the same time.

Q. Do you know what time Albright retired?

A. He retired the same as the rest—the entire rotary crew.

Q. The entire crew? A. Rotary crew.

Q. Where did they retire? A. In the caboose.

Q. Did the caboose remain there while you went north for water?

A. No, I think we took it to 105.

(Testimony of Harry N. Wilson.)

Q. Took it along with you? A. Yes, sir.

Q. Did you take your rotary on up there?

A. Yes, sir.

Q. Who took the rotary up?

A. Mr. Taylor, the watchman, fired; Scott, the brakeman, piloted and I relieved Mr. Reed.

Q. And do you know what time Mr. Holden got up? A. I couldn't say—no.

Q. Do you know what time Mr. Reed got up?

A. I could not, other than that they were called for one o'clock according to the records.

Q. You don't know what time they got up?

A. No, I don't know.

Witness excused.

(At 11:10, recess for ten minutes.) [213—160]

[Testimony of August Thiele, for Plaintiff.]

AUGUST THIELE a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. August Thiele.

Q. Where do you reside?

A. At the Rainier Grand Hotel, Cordova.

Q. What is your occupation? A. Fireman.

Q. On what?

A. The Copper River & Northwestern Railroad.

Q. How long have you been fireman on the Copper River & Northwestern Railroad?

A. Started in on May 1, 1910.

Q. Since 1910? A. Yes, sir, since 1910.

(Testimony of August Thiele.)

Q. Were you in the employ of the Copper River & Northwestern Railway Co. in the month of December, 1911, and January, 1912? A. Yes, sir.

Q. Were you employed at that time on the train leaving here about one o'clock on the 30th of December, 1911? A. Yes, sir.

Q. What were you doing on that train?

A. I was firing engine 23.

Q. Where was that engine in the train?

A. The first pusher—it was right behind the rotary.

Q. Did you work continuously after you left here until you reached Teikhell? A. Yes, sir.

Q. What time was it, or do you recall, when you reached Bridge [214—162] 75A going north?

A. Well, I don't recall the exact time. The train-keeper can tell you the exact time.

Q. About 9 o'clock on the evening of the 31st?

A. Yes, sir.

Q. You had been on duty up to that time—

Mr. BORYER.—We object to that as leading.

Mr. COBB.—It is leading but it is preliminary and these facts have been testified to.

By the COURT.—Those are matters that were referred to by the trainmaster—the facts stated there are probably the true facts, as you understand it?

Mr. COBB.—As I understand it they are.

By the COURT.—You may assume those then.

Mr. COBB.—I assume they got there at 9 o'clock or a little after, on the 31st.

Q. You had been employed continuously up to that

(Testimony of August Thiele.)

date, up to that hour?

Mr. BORYER.—We object to that as leading. If he wants to know what the witness did, he should have him state what he did.

By the COURT.—The objection will be sustained. I am assuming they arrived there at 9 o'clock and the witness should state what he remembers of his own personal knowledge—what he did when he got to Teikhell.

Q. What were you doing from the time you left here until you reached Bridge 75A?

A. I was firing engine 23.

Q. Continuously? A. Continuously.

Q. Do you recall how long you were there at that bridge? [215—163]

A. I reckon about an hour—a little more, maybe.

Q. State whether or not you passed over a bridge with the entire train, including the local, when you first reached it.

A. We passed over the bridge—I couldn't say whether the local passed over it or not.

Q. How far beyond did you go?

A. About half a mile.

Q. How close was the local following?

A. I couldn't say the exact distance very close.

Q. About how far?

A. I didn't look back at that time, I couldn't say.

Q. After you had passed over the bridge, state whether or not the train backed back.

A. We backed back—I don't know about the local.

Q. I am referring to the train you were on.

(Testimony of August Thiele.)

A. Yes, sir, we backed back on to the bridge.

Q. Did you stop on the bridge as you backed back?

A. Yes, sir.

Q. And you were there about an hour?

A. I should judge about that time. I couldn't say the exact time.

Q. What were you doing?

A. I was standing by the engine. I was keeping up steam for the engine.

Q. Do you know what they backed back for?

A. Taking water for the rotary.

Q. On what engine? A. On the rotary.

Q. After they had taken water, state what was the next thing [216—164] done to the train—which way did it go?

A. If I recollect right we backed up and took coal on the rotary.

Q. Then you backed back still further south of the bridge and took coal? A. Yes, sir.

Q. After you took coal, what did you do?

A. We proceeded on to 78.

Q. And on your way to Teikhell? A. Yes, sir.

Q. That is where the train started for?

A. Yes, sir.

Q. When you got to Teikhell at 5:45 on the morning of the first what did you do?

A. I went right to bed.

Q. What time were you called?

A. 12:30, I think it was, or one o'clock.

Q. You left there at what time—it was at 4:45?

(Testimony of August Thiele.)

Mr. COBB.—I am assuming those figures are correct.

Mr. BORYER.—No objection.

Q. When you came back do you recall at what time you reached that bridge again? A. Yes, sir.

Q. Do you recall taking up the section-men?

A. I recall taking up the section-men at 78.

Q. From 78, as you went north? A. Yes, sir.

Q. They were taken up? A. Yes, sir.

Q. Now, when you returned to this bridge did anything happen? [217—165]

A. The first thing I know, I just got through putting coal in the fire-box and was in the act of going up to the side of my engine, and she hit, and I thought the rotary was off the track, and Engineer Lee spoke up and said, "By God! Somebody is killed!" Something like that, and he jumps off the engine and I followed him.

Q. Where did you go?

A. Up to the rotary.

Q. And when you got around there what did you see?

A. I heard Herman holler, I think it was, or somebody holler, and by that time Mr. Kitsman was up there and we tried to open the door on the tank, on the coal-tank, and we opened that and got the coal out and Mr. Wilson climbed into the tank and got Herman Albright out, and I went and got an ax and tore the cab off the rotary and Mr. Reed, about the location where Reed was over toward the boiler, and by that time the whole gang, passengers and crew,

(Testimony of August Thiele.)

were around there helping.

Q. Could you locate Reed?

A. We located him after awhile.

Q. Whereabouts was he?

A. Just about opposite the throttle of the rotary.

Q. Underneath the rotary?

A. The way it looked to me; yes, sir.

Q. Did you yourself locate him?

A. A certain gentleman, a passenger there, located him first by feeling his hand and I felt it afterwards.

Q. You felt down in the water and got hold of his hand? A. Yes, sir.

Q. Could you get him out?

A. No, sir. [218—166]

Q. You did, though, get hold of his hand?

A. Yes, sir.

Mr. COBB.—That's all.

Cross-examination.

(By Mr. BORYER.)

Q. You left here on the rotary X2, did you, on the 30th? A. On Engine 23.

Q. That was attached to rotary X2? A. Yes.

Q. While you were at Mile 39, what were you doing?

A. I was on the engine, looking after the engine, keeping the fires and steam up.

Q. Did you clean your fires while you were there?

A. I don't think I did—I wouldn't swear to it, but I don't believe I did.

Q. Then you left there and went to Miles Glacier?

A. Yes, sir.

(Testimony of August Thiele.)

Q. About how long did you remain at Miles Glacier? A. Just about an hour, I guess.

Q. Did you clean your fires there? A. No, sir.

Q. Then you worked through the canyon?

A. Yes, sir.

Q. You took water at 55? A. 55.

Q. Did you clean your fires there?

A. I don't think I did.

Q. Then the next stop was the stop just after you had crossed Bridge 75A?

A. If I recollect right, we took water at 67 Bridge.

[219—167]

Q. You think you took water at 67 Bridge?

A. If I recollect right.

Q. Do you recall doing anything there?

A. Nothing except siphoning water.

Q. Just siphoning water? A. Yes, sir.

Q. About how long were you there?

A. I should judge about an hour or two hours, I guess.

Q. And you were siphoning water?

A. Yes, sir.

Q. At 67? A. Yes, sir.

Q. Did you clean your fires there? A. No, sir.

Q. About what time did you get to this point, 67?

A. I couldn't say. I didn't keep track of the time.

Q. You got there about 11 o'clock?

A. Somewhere around there.

Q. And stayed there about an hour and a half?

A. Something about that time.

(Testimony of August Thiele.)

Q. Taking water? A. Yes, sir.

Q. How long does it ordinarily take you to take water for the three engines, the rotary and two engines?

A. Thirty or forty minutes to an engine, I guess.

Q. And you stayed there about an hour and a half and took water? What were the weather conditions at that time?

A. I think they were pretty cold that night—I don't remember about the exact condition, but I think it was snowing a little, if I recollect right.

[220—168]

Q. The snow was light there? A. Yes, sir.

Q. Not very deep?

A. I don't know. The snow was deep in the cut, right on the bridge, at that time. I think it was snowing a little where we were taking water.

Q. Did you clean your fire there? A. No.

Q. You didn't clean your fire then from the time you left? A. No, sir.

Q. You had an opportunity to clean your fire there, did you?

A. I did not think it was necessary to clean the fire there.

Q. You didn't think it was necessary to clean your fire there? A. No.

Q. And you are certain you did not clean your fire there? A. No, sir.

Q. How far is it from there to bridge 75A?

A. 67 Bridge is at Mile 68, I think.

Q. At the end of Mile 67? A. 68.

(Testimony of August Thiele.)

Q. Then it would be seven miles from there to the other bridge? A. About seven or eight miles.

Q. How long did it take you to reach there, up to bridge 75A?

A. That night? It takes quite a while. The snow was pretty hard bucking. I don't recollect just exactly how long it took us, but I think you can find out there.

Q. You think you were on bridge 75A for something like an hour and a half?

A. An hour or an hour and a half, I guess—something like that.

Q. Taking water there?

A. Yes, taking water on the rotary. [221—169]

Q. What were you doing while they were taking water?

A. I was tending to the fire. They had some hose coupled on Engine 23 and discharge hose into the rotary tank.

Q. Will you repeat that?

A. They had the steam hose from the siphon coupled on to Engine 23 and discharge hose into the rotary tank—to siphon it up into the rotary tank.

Q. Where was your engineer?

A. He was coupling up the steam hose on the engine.

Q. Who was your engineer? A. Mr. Lee.

Q. Were you on the bridge at the time?

A. Yes, sir.

Q. Your engine was on the bridge?

A. Yes, sir.

(Testimony of August Thiele.)

Q. Are you certain you did not clean your fires there? A. Yes, sir.

Q. You are certain you did not dump your pan there? A. Yes, sir.

Q. While you were working there, did you see the rotary? A. I seen the tank from the engine.

Q. Were you talking with any of the rotary crew?

A. No, sir.

Q. How came you to connect up with the rotary?

A. It would be so much handier with the steam hose. The engine is right behind the rotary and we could connect up right there and siphon into the rotary.

Q. Who told you to connect up?

A. I didn't connect up—Mr. Lee, the engineer, connected up.

Q. Did you see Holden there at that time?

A. No, sir. [222—170]

Q. Did you see Reed there at that time?

A. No, sir.

Q. Did you see Albright there at that time?

A. I didn't get off the engine there—I didn't see anybody.

Q. You left there and went on north then?

A. Yes, sir.

Q. You arrived in Tiekhell about 5:45?

A. Yes, sir.

Q. And went straight to bed? A. Yes, sir.

Q. Who took charge of your engine?

A. The night watchman, Mr. Taylor.

Q. Did Mr. Lee go to bed with you?

(Testimony of August Thiele.)

A. I don't recollect whether we went to bed together or not—he went to bed right there.

Q. All of the rotary crew went to bed then?

A. I presume so; yes.

Q. Except Mr. Wilson?

A. I didn't pay much attention to them at that time—I just went in there and took my clothes off and went to bed.

Q. Were you talking to any of them in there?

A. I don't recollect that I did. I might have said a word or two but I don't recollect it.

Q. Do you remember if Reed was with you?

A. No, I do not.

Q. Do you remember if Albright was with you?

A. No, sir.

Q. Remember if Holden was with you?

A. No.

Q. You don't recall anybody that came back?

[223—171]

A. No, I didn't pay any attention to them.

Q. You remained in bed until what time?

A. About 12:30 or 40 we were called.

Q. And after that you went and had your lunch?

A. Yes, sir.

Q. And stayed there until what time?

A. I went on the engine somewhere around one o'clock, I should judge—a little after.

Q. When you reached the bridge coming down at the time of this accident, did you notice the bridge—after the accident? A. After the accident?

Q. Yes.

(Testimony of August Thiele.)

A. No, sir, I don't think I did.

Q. Did you see the bridge?

A. I got a slight glance of it.

Q. Did you see any fire?

A. There was a little fire on the further end, on the south end.

Q. Still burning, was it?

A. Still burning, yes, sir.

(By Mr. COBB.)

Q. About how long is that bridge?

A. I should judge 120 or 30 feet, something like that—more than that.

Q. This fire you saw was at or near the south end?

A. On the end exactly right on the end somewhere around there.

Q. Somewhere around the south end?

A. Yes, sir.

Q. Do you recall where you did dump your ashes on that northern run? [224—172]

A. I don't think I dumped my ashes at all on that trip—left that for the watchman at Teikhell.

Q. As a matter of fact, after the second day out you were pretty tired, were you not?

A. Well, yes.

(By Mr. BORYER.)

Q. Did you notice any fire on the bridge at any other part except the south end?

A. No, sir, I did not.

Q. Did you notice the end of the bridge where the rotary had gone down?

A. No, sir; it was pretty dark that night and you

(Testimony of August Thiele.)

couldn't see. The tank of the rotary was standing up—I didn't pay much attention to the place.

Q. You couldn't see?

A. No, I could just see the flame.

(By Juror MANTHEY.)

Q. Did you go to bed just as soon as you got to Teikhell or did you help switch your train around?

A. After we got word to tie up I went to bed.

Q. Did you get word to tie up before you switched your train around or after?

A. I didn't switch any. They just went around the loop, after we got our water and spotted for coal, and tied up.

Witness excused. [225—173]

[Testimony of George Scott, for Plaintiff.]

GEORGE SCOTT, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. George Scott.

Q. Where do you reside? A. Cordova.

Q. What is your occupation?

A. Railroad brakeman.

Q. In whose employ?

A. Copper River & Northwestern Railroad Co.

Q. How long have you been in the employ of the Copper River & Northwestern Railway Co.?

A. August, 1910.

Q. You were in their employ then during the month of December, 1911, and January, 1912?

(Testimony of George Scott.)

A. Yes, sir.

Q. Were you on that train that left here for Teik-hell on the 30th of December, 1911?

A. I was; yes, sir.

Q. In what capacity were you at work on that train? A. Brakeman on the rotary.

Q. Brakeman? A. Yes, sir.

Q. What are the duties of the brakeman?

A. To protect the rear of his rotary so they don't have a collision; help out in general around wherever necessary.

Q. Where did you stay?

A. In the rotary caboose.

Q. Where is that, the rotary caboose, with reference to the [226—174] pusher engines?

A. Behind the last pusher.

Q. There are two pusher engines?

A. If there is only one, it is behind the first one—it is at the rear of the fleet.

Q. Do you recall reaching this bridge at 75A?

A. Yes, sir.

Q. About 9 o'clock on the morning of the 31st?

A. Somewhere around there.

Q. Now, state what you had been doing from the time you left here until you got to that bridge, in a general way.

A. I had been protecting the rotary; that is all I had been doing.

Q. Were you on duty continuously?

A. Yes, sir.

Q. When you reached this bridge, state to the jury

(Testimony of George Scott.)

whether or not you passed it. A. We passed it.

Q. How far? A. About half a mile north.

Q. Then what was the next thing that happened?

A. Went back to Bridge 75A for water.

Q. How long were you on that bridge taking water, as near as you can recall?

A. I don't just remember now.

Q. You were pretty tired and can't remember just what did happen at that time?

A. I will tell you—with my job I can get sleep. I can go a long while on the flagging job on the rotary without sleep—I can get enough sleep on the flagging job on the rotary.

Q. You can get some sleep? [227—175]

A. Yes, I can.

Q. You were sleeping at this bridge?

A. No, sir.

Q. After you took water what happened?

A. Why, we went a little further back and coaled up the rotary.

Q. Went back still further south on the bridge?

A. Yes, sir.

Q. And took coal—from what did you take the coal?

A. From some coal that had been unloaded from a car on the local train.

Q. How close was the local following you?

A. As close as it was safe.

Q. You were watching out on the rear end all the time for this local? A. Yes, sir.

(Testimony of George Scott.)

Q. Now, as you passed north again after coaling up, were you on the rear of your caboose?

A. Yes, sir.

Q. Did you see any fire on that bridge as you went over? A. Not as I went over it; no, sir.

Q. If it had been burning much you would have seen it? A. I would have seen it probably.

Mr. BORYER.—What time have you reference to?

Mr. COBB.—When they were going north, after they had coaled up.

Q. And then you went on to Teikhell?

A. Yes, sir.

Q. Reached there at 5:45 on the morning of the first? A. Somewhere around that.

Q. Did you go to bed right away?

A. No, sir. [223—176]

Q. What did you do?

A. Wilson, Taylor and myself took the rotary up to Mile 105 to a water-tank.

Q. And watered it there? A. Yes, sir.

Q. What time did you get back?

A. I don't remember.

Q. Did you go to bed then?

A. After we turned the loop and spotted the rotary for coal we went to bed.

Q. About what time was that?

A. I don't remember what time we tied up. The train-sheets will show what time we tied up.

Q. How long was it before you were called?

(Testimony of George Scott.)

A. I think we were called for one o'clock that afternoon.

Q. You went on duty, then, at one?

A. Yes, sir.

Q. Do you know why you didn't get out of there before 4:15?

A. They were making some repairs to the rotary, as I understood it.

Q. Who was doing that?

A. The engineer; the rotary crew.

Q. Mr. Reed and the rest of the crew on the rotary? A. I think so.

Q. As you came back to Bridge 75A, between 7:30 and 7:35 on the evening of the first, and you got to this bridge, did anything happen?

A. The rotary went through the bridge.

Q. What was the first thing that called your attention to it, as you remember? [229—177]

A. That something was wrong?

Q. Yes.

A. The air went into the emergency.

Q. Did you go around to the front?

A. Yes, sir, I did.

Q. Tell the jury what you saw when you got around there.

A. The rotary was lying off on her side that way (indicating).

Q. Which side?

A. Why, she was headed south and would be to the right side and it was on a kind of a slant, headed down—that is the way it was.

(Testimony of George Scott.)

Q. What else? Go ahead—tell what you know about it. Did you see Albright?

A. I got moving around to see what kind of shape the boys were in and I got an answer from Holden in the pilot-house—the rest of the boys I couldn't get any word from them, so when I heard Holden's voice, I started getting him out. Took him back to the coach, and in the meantime they had found, they had started to work on Albright and got him out. Reed, it was impossible to get out.

Mr. COBB.—That's all.

Cross-examination.

(By Mr. BORYER.)

Q. You say you reached Teikhell at 5:45 in the morning or about that time?

A. If that is the time on the train-sheets—I can't remember the hours and minutes.

Q. But when you did reach there, who took charge of the rotary? A. Harry Wilson.

Q. What did he do on the rotary?

A. He ran it. [230—178]

Q. What did you do? A. Pilot.

Q. Who took charge of the fires?

A. Warren Taylor, the night watchman.

Q. What became of Reed and Holden and Albright? A. Went to bed, I suppose.

Q. They didn't remain on the rotary?

A. No, sir.

Q. Then you and Wilson and Taylor took the rotary around the loop, did you? A. We did.

Q. And went up to the water-tank and watered?

(Testimony of George Scott.)

A. Went to the water-tank first and around the loop afterwards.

Q. First went to the water-tank and then came back and went around the loop and had your trains headed for Cordova? A. Yes, sir.

Q. You are certain that Reed and Holden and Albright did not remain on the rotary after it reached Teikhell? A. No, sir.

Q. They did not? A. They did not.

Q. What engine pushed you up there?

A. The same engines we had left town with—21 and 23, I think it was.

Q. You say you were on duty all the time after you left Cordova until you reached Teikhell?

A. Yes, sir.

Q. You didn't fall asleep at your post?

A. I can get sleep on the flagging job.

Q. You had plenty of sleep, then? [231—179]

A. I had plenty; yes, sir.

Q. And you were not sleeping when you should have been working? A. No, sir.

Q. Would you sleep when they would stop?

A. If there was nothing for me to help them out with I would lay down and catch a little sleep.

Q. When they stopped at Bridge 75A taking on water, did you take a nap then?

A. Not at that time. I was helping them with the siphon hose out there and told the local to unload some coal for us and spotted the local for coal when she backed up to take the coal.

Q. What were you doing in connection with the

(Testimony of George Scott.)

siphoning of the water?

A. I just helped them get the siphon hole open and the siphon started, and then I went back to the local to tell them about the coal.

Q. What side of the stream did you take the water from—the upper side of the bridge or the river side of the bridge?

A. From the river side, or right-hand side going north.

Q. The right-hand side going up?

A. Going north; yes.

Q. Did you see Reed there? A. I did.

Q. See Albright? A. No, sir.

Q. See Holden? A. No, sir.

Q. See Lee?

A. He was sitting on top of his engine at the steam valve, to steam into the siphon when we had it ready.
[232—180]

Q. Just what work were you doing in regard to helping to get this water in?

A. If I remember right, we used the steam hose to get our siphon hole down through the ice. I handled the steam hose awhile and probably shoveled a little snow to connect this steam hose with some of the engines,—I don't know just which ones it was.

Q. Connect with what engines?

A. 23—I think it was the head pusher we had the steam connection to.

Q. Could you see the rotary? A. Yes, sir.

Q. Could you see the bridge? A. Yes, sir.

Q. Could you then see men if they were around

(Testimony of George Scott.)

there? A. Yes, sir.

Q. You could see what Lee was doing, could you?

A. I could.

Q. You could see what the men were working, trying to get this hole through the ice, were doing?

A. Yes, sir.

Q. What distance could you see? How far was the hole from the position where Lee was on his engine?

A. That probably would not have been over 35 or 40 ft. at the most.

Q. You could see Lee from the hole—on his engine? A. Yes, sir.

Q. Could you distinguish who it was?

A. Well, I knew who it was.

Q. You could tell who it was? [233—181]

A. I knew it would be him,—it was his engine. No one else would be there.

Q. Are you certain it was not Thiele?

A. There is a little difference in the size,—that would be one way I could tell. I could tell it was a large man,—larger than Thiele is.

Q. Now, let us see if you have that correct. You were headed north, going towards Chitina, and you siphoned water from the right-hand side of the bridge, going north? A. Yes, sir.

Q. The hole that you made to siphon this water through was about how far from the rotary?

A. Just a little ways to the side of the bridge.

Q. About how far would you say, approximately?

A. Probably ten or twelve or 15 ft., somewhere around there.

(Testimony of George Scott.)

Q. What was about the height of that bridge from the ice?

A. I couldn't just say what the height of that bridge was. It was taller than a man's head.

Q. And do you know what position the first pusher engine was in at the time they were taking this water—was that on the bridge?

A. I am pretty sure it was.

Q. How about the next one—the second pusher?

A. The second pusher was not entirely on the bridge, I don't think.

Q. How about the caboose?

A. The caboose was off the bridge.

Q. When you stopped on the bridge what did you do—what was your first act?

A. I dropped off the caboose just before we hit the bridge and [234—182] got down to where the siphon had hit when they threw it off the rotary.

Q. Where was the local?

A. The local was back to clear—she was back far enough to clear us at the time.

Q. How far back was she?

A. I don't just remember how many car lengths or anything like that, but it was back far enough so we could stop at the siphon hole without touching the local.

Q. And how long had she been back there?

A. Probably three or four minutes before we got there.

Q. Had she crossed the bridge?

A. The second time she crossed the bridge.

(Testimony of George Scott.)

Q. She followed you up?

A. She followed us up and backed back over it.

Q. To push back? A. Yes, sir.

Q. Now, then, when the rotary pulled out which side of the stream did you go on to the rotary—which side of the bridge? I mean, the north side or the south side?

A. I don't just remember which side I did go on. We went from the bridge back to take the coal.

Q. Did you go on your rotary to ride back?

A. I rode the caboose back.

Q. You rode the caboose back to the point where you took the coal? A. Yes, sir.

Q. Now, after you took this coal, what did you do?

A. Started north again.

Q. Was the local hooked to you? A. No, sir.

[235—183]

Q. How close was she to you when you started, when you both started—did you see her start?

A. No, I don't remember whether I saw her start or not.

Q. You started first, did you?

A. We started first, yes, sir.

Q. Did she start right after you started?

A. That I couldn't say. I don't just remember whether she started immediately or whether she laid back there a few minutes.

Q. How far were you from the bridge where you took this coal? A. Probably 100 yards or so.

Q. Then you had started and your rotary was going—where did you go when you started your rotary?

(Testimony of George Scott.)

A. Stood out on the platform of the caboose for awhile.

Q. And how close was the local to you,—could you see her? A. She was in sight back there; yes.

Q. Were you watching her? A. I was.

Q. Why were you watching her?

A. I just stood on the platform there to see when she would start, to get a line on her for my future work.

Q. It was your duty to protect that end of the train against the local? A. It was.

Q. And were you standing there in order to protect her against that train?

A. Just as I said—to see when she started.

Q. You were standing there and watching?

A. Yes, sir.

Q. If she had not started there was no use to watch her?

A. It was her duty to start and follow us. [236—184]

Q. You were expecting her to follow you?

A. Yes, I was.

Q. Then you were watching the engine, were you, of the local? A. I was.

Q. And you stood there and watched it for how long?

A. I don't remember how long I did watch her.

Q. For half a mile, would you say?

A. I don't think you could see for half a mile there.

Q. While you were traveling half a mile up the

(Testimony of George Scott.)

track, I mean? A. Probably.

Q. And you had your eye on the engine?

A. Most of the time.

Q. That was your main object, wasn't it?

A. Yes, sir.

Q. Your duty? A. Yes, sir.

Q. And as you went over the bridge were you thinking more about the bridge or more about the engine?

A. I was thinking more about the engine.

Q. Behind you? A. Yes, sir.

Q. And that is what you had your eye on, wasn't it? A. Mostly.

Q. Then, as a matter of fact, you didn't notice the bridge closely, did you?

A. Naturally a man will glance down on the bridge going over it if you are standing on the caboose.

Q. And you glanced down? A. I did.

Q. And that is all you did? [237—185]

A. Yes, sir.

Q. And then when you state if there had been any fire on there you would have seen it, you didn't mean to say that you were looking closely for fire?

A. No, I wasn't looking closely for fire.

Q. There might have been fire there and you would not have noticed it?

A. There might have been.

(By Mr. COBB.)

Q. Who was the engineer on the local?

A. Mr. Frank Townsend.

Q. Engineer or conductor? A. Engineer.

Mr. COBB.—That will be all.

Witness excused.

Whereupon Court took a recess until 2 P. M.
[238—186]

**[Testimony of Harry N. Wilson, for Plaintiff
(Recalled).]**

HARRY N. WILSON, recalled by the plaintiff.
(By Mr. COBB.)

Q. What is your name?

A. Harry N. Wilson.

Q. You have the train-sheets that were asked for this morning, the time-tables? A. Yes, sir.

Q. I wish you would turn to them, beginning with the train on the 12th, say, and tell the jury as you come to it how long it took each train to get through to Teikhell,—from the 12th up to the 30th.

A. What train do you refer to—all trains?

Q. Yes, each train that went through.

A. The rotary on the 12th left Teikhell at 7:35 A. M.; arrived at Cordova at 4:50 P. M.

Q. That was the south-bound train?

A. That was the south-bound train.

Q. When was the next train out, northbound—when did that train go up?

A. That train went up on the 11th.

Q. What time did it leave here?

A. Left Cordova at 7:35 A. M.; arrived at Teikhell at 5:20 P. M.

Q. Left here when? A. 7:35 A. M.

Q. And reached Teikhell when?

(Testimony of Harry N. Wilson.)

A. At 5:20 P. M.

Q. Did you have a train out on the 13th?

A. We had a train south on the 13th.

Q. When was your next train north?

A. The next through train north was on the 15th.

Q. How often were you running trains in December, 1911, regular [239—187] trains?

A. What do you refer to? How many times? How often we were running them?

Q. Yes.

A. We were supposed to be running three times a week—three trips a week.

Mr. BORYER.—I suggest inasmuch as Mr. Wilson was not in the dispatcher's office at that time it might be better to bring the dispatcher on. He is more familiar with his own time-sheets.

By the COURT.—Have you the dispatcher here?

Mr. BORYER.—Yes, sir.

Mr. COBB.—I don't care how we get at them, but those sheets show the time.

Mr. BORYER.—They show the time, but Mr. Wilson may not be familiar with the manner in which they are kept by the dispatcher.

Mr. COBB.—Then I will withdraw Mr. Wilson.

Mr. BORYER.—Mr. De Leo is here and you can put him on.

Mr. COBB.—When we get a recess I will get Mr. De Leo and go through it with him and I can get through with it very quickly, and I will withdraw this witness.

Witness excused.

Mr. BORYER.—I would like to recall Mr. Kitsman for a moment.

By the COURT.—Very well. [240—188]

[Testimony of Charles Kitsman, for Plaintiff (Recalled—Cross-examination).]

CHARLES KITSMAN, recalled for further cross-examination:

(By Mr. BORYER.)

Q. I believe you stated on direct examination, at the request of one of the jurors, that no examination was made of the men when they applied for positions with the company.

By the COURT.—The question was as to physical examination. What was your question, Mr. Manthey—as to physical examination?

Juror MANTHEY.—Physical examination; yes, sir.

Witness excused.

[Testimony of W. George Bibber, for Plaintiff.]

W. GEORGE BIBBER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name?

A. George Bibber—W. G. Bibber.

Q. What is your occupation?

A. With the train crew—brakeman.

Q. How long have you been in the railroad service?

A. About four years.

Q. Are you familiar with rotary snow-plows as

(Testimony of W. George Bibber.)

they are constructed? A. Yes, sir.

Q. Do you know these snow-plows that were used in the month of December, 1911, by the Copper River & Northwestern Railway Co.—what was the type of them. [241—189]

A. It was the American Locomotive Works—built by them, I suppose.

Q. Now, I hand you an illustrated catalogue issued by the American Locomotive Company of New York City of rotary snow-plows, and call your attention to the cut on page 4, and ask you if that is the type of snow-plow they were using here.

A. Yes, I think it is about the same.

Q. Now, I want you to explain to the jury from that cut—just go up there where they can all see it.

A. You want me to explain the rotary to them?

Q. Yes. Where each man worked and how the rotary was divided into compartments, if it was so divided.

A. Well, this is the pilot-house here; this is where the pilot stays. There are two doors back of him but they are generally open in the back. The engineer is in here by this door. The fireman works back here by his water injectors, right in here, back of the engineer. The engineer is over here. Clear over to the pilot-house is a runway about three feet wide. That is as near as I can explain that to you. The throttle is right here by the engineer. The engineer runs by a signal from the pilot in the pilot-house. He can't see out ahead here very well.